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COMMUNITY CORRECTIONS - SERVICES CORRECTIONNELS COMMUNAUTAIRES

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The JUSTICE REPORT contains information of value to Association readers and the public interested in matters related to the administration of justice in Canada. Opinions expressed in this publication do not necessarily reflect the Association's views, but are included to encourage reflection and action on the criminal justice system throughout Canada.

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L'ACTUALITÉS JUSTICE renferme des renseignements utiles aux lecteurs de l'Association et au public qui s'intéressent aux questions relatives à l'administration de la justice au Canada. Les opinions qui sont exprimées ne reflètent pas nécessairement les vues de l'Association, mais y figurent afin d'encourager à réfléchir et à agir sur la justice pénale dans tout le Canada.

Pour obtenir de plus amples renseignements sur les activités de l'Association, veuillez communiquer avec :

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EDITORIAL

ANGELA FALK
President of the
Canadian Criminal Justice Association

This edition of the *Justice Report* looks at parole, probation and conditional sentencing, all of which are part of community corrections. The associated criminal justice tools, which are broad, complex and must consider diverse viewpoints, are of interest to the public.

Today's criminal justice system faces many complex issues, including consequences that can lead to court backlogs as well as overpopulation and racial overrepresentation in some prisons and jails. One of the most challenging tasks is responding with appropriate measures that address the needs of an increasingly diverse offender population. Responsive interventions are required to effect successful community rehabilitation and reintegration amidst new demands and shifting public mandates.

The concept of community corrections embodies a balance of prevention, intervention and enforcement in response to this broad scope of criminal and social justice issues. The increasingly wider use of conditional release as opposed to incarceration demonstrates the validity of related measures that are effective in reducing recidivism.

Federal, provincial and territorial governments have made important steps in their direction to uphold community corrections to varying degrees but, with mixed reactions. While there are gaps in policies and practices across jurisdictions, a careful review of laws and regulations can help lay the groundwork for collaborative and responsive approaches to strengthen uniformity.

Recognition of the need for community-based corrections (i.e., programmes, sentencing and supervision) as alternatives to incarceration is evidenced by changes to various laws and reforms that indicate a growing acceptance for a balanced correctional system. Exercising reasonable, affordable, safe and humane controls is a legitimate means of dealing with those who break the law.

The Canadian Criminal Justice Association (CCJA), intersecting with a network of criminal justice partners, has been integral in the establishment and mobilization of community corrections and community based programmes. This is reflected in CCJA's Position Papers, Policy Review Committee (PRC) briefs, the Justice Report, and the Journal of Criminology and Criminal Justice (CJCCJ).

Increased sharing of domestic and international experience and research is key to developing successful initiatives across the criminal justice landscape. In planning the 5th World Congress of Probation and Parole "No One Left Behind: Building Community Capacity", CCJA is collaborating with an Advisory Group comprising various international paroling associations as well as the Parole Board of Canada, Correctional Service of Canada, Public Safety Canada, and the Royal Canadian Mounted Police.

This international Congress aims to increase understanding and awareness of conditional release, and explore challenges, opportunities and successes in building capacity and sustaining partnerships that support successful community reintegration.

To learn more please check out CCJA's upcoming events at www.ccja-acjp.ca.

ÉDITORIAL

ANGELA FALK
Présidente de
l'Association canadienne de justice pénale

Ce numéro d'*Actualités Justice* porte sur la libération conditionnelle, la probation et les peines d'emprisonnement avec sursis, qui font toutes partie des services correctionnels communautaires. Les outils connexes de justice pénale, qui sont vastes, complexes et doivent tenir compte de perspectives diverses, présentent un intérêt pour le public.

Le système de justice pénale d'aujourd'hui est confronté à plusieurs enjeux complexes, y compris des conséquences qui peuvent entraîner un engorgement des tribunaux ainsi qu'une surpopulation et une surreprésentation raciale dans des prisons et pénitenciers. L'une des tâches les plus difficiles est de répondre avec des mesures appropriées qui comblent les besoins d'une population de contrevenants de plus en plus diversifiée. Des interventions adaptées sont nécessaires pour arriver à une réadaptation et réinsertion communautaires réussies dans un contexte de nouvelles demandes et de remaniements de mandats publics.

Le concept de services correctionnels communautaires englobe un équilibre de prévention, d'intervention et d'application de la loi en réponse à ce large éventail d'enjeux de justice pénale et sociale. Le recours de plus en plus répandu de la mise en liberté sous condition montre la validité de mesures connexes efficaces pour réduire le récidivisme.

Les gouvernements fédéral, provinciaux et territoriaux ont pris des mesures importantes pour soutenir les services correctionnels communautaires à divers degrés, mais avec des réactions mitigées. Il existe des lacunes en matière de politiques et de pratiques dans les provinces et territoires, mais un examen approfondi des lois et des règlements peut préparer le terrain à des approches collaboratives et adaptées pour renforcer l'uniformité.

Les modifications apportées à diverses lois et les réformes qui montrent une acceptation accrue d'un système correctionnel équilibré témoignent de la reconnaissance du besoin de services correctionnels communautaires (c. à d. programmes, peines d'emprisonnement et supervision) comme solutions de rechange à l'incarcération. Le recours à des mesures de contrôle raisonnables, abordables, sécuritaires et humaines constitue un moyen légitime de traiter avec les personnes qui contreviennent à la loi.

L'Association canadienne de justice pénale (ACJP), avec un réseau de partenaires du milieu de la justice pénale, a joué un rôle essentiel dans la mise en œuvre et la mobilisation de services correctionnels communautaires et de programmes communautaires. Les énoncés de principe de l'ACJP, les énoncés de politiques du Comité d'examen des politiques (CEP), la publication *Actualités Justice* et la *Revue canadienne de criminologie et de justice pénale* (RCCJP) de l'ACJP en témoignent.

Un échange accru des expériences et des recherches nationales et internationales est essentiel à l'élaboration d'initiatives efficaces dans le milieu de la justice pénale. Dans le cadre de la planification du 5e Congrès mondial sur la probation et la libération conditionnelle « Personne n'est laissé pour compte : Renforcer les capacités de la communauté », l'ACJP collabore avec un groupe consultatif composé de diverses associations internationales de libération conditionnelle ainsi que la Commission des libérations conditionnelles du Canada, Service correctionnel du Canada, Sécurité publique Canada et la Gendarmerie royale du Canada.

Ce Congrès international vise à mieux faire comprendre et connaître la mise en liberté sous condition, à explorer les défis, les possibilités et les réussites touchant le renforcement des capacités et le maintien de partenariats qui favorisent la réinsertion communautaire efficace.

Pour en savoir davantage, informez vous sur les évènements à venir de l'ACJP à l'adresse www.ccja-acjp.ca.

CALL FOR PAPERS

World Congress on Probation and Parole 2021

No One Left Behind: Building Community Capacity

September 28th - October 1, 2021 | **Delta Hotel - Ottawa (Ontario) Canada**

Please submit your proposals to CCJA by email (ccja-acjp@rogers.com), fax (+1 (613) 725-3720), or post (320 Parkdale Avenue, Suite #101, Ottawa (Ontario) Canada K1Y 4X9).

You are cordially invited to submit an abstract for a presentation at the 5th World Congress on Probation and Parole!

This international event is being organized by the Canadian Criminal Justice Association in collaboration with the Parole Board of Canada, Correctional Service Canada, Public Safety Canada, and the Royal Canadian Mounted Police. It will be held at the Delta Hotel in Ottawa, Ontario, Canada. Consider attending this networking opportunity to learn about the latest in probation and parole around the world.

The theme of the event will be "**No One Left Behind: Building Community Capacity**". This Congress will explore the challenges, opportunities and success stories involved in building community capacity and sustaining partnerships that support successful reintegration for diverse groups of offenders in an evolving global environment.

Academics, researchers, students, community-based organizations, practitioners, and policy leaders are invited to submit presentation proposals relating to one or more of the sub-themes listed below. Please note that elements within the sub-themes are not exclusive. Other subjects can be added if they are connected to the main theme of "No One Left Behind: Building Community Capacity".

CALL FOR PAPERS

World Congress on Probation and Parole 2021

No One Left Behind: Building Community Capacity

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Sub-Themes

- Offenders with mental health needs
- Over-represented minorities
- Elderly offenders
- Disabled offenders
- Indigenous offenders
- High-risk offenders
- Staff training
- Building community capacity
- Partnerships
- Women offenders
- Radicalized offenders
- Young offenders
- Long-term offenders
- Public awareness strategies

Presentation Types

- WORKSHOPS
- SHORT PRESENTATIONS
- SCHOLARLY POSTER PRESENTATIONS
- DOCUMENTARIES, SHORT FILMS, PODCASTS

Organized by the Canadian Criminal Justice Association in collaboration with the Parole Board of Canada, Correctional Service Canada, Public Safety Canada, and the Royal Canadian Mounted Police.

APPEL DE COMMUNICATION

5e Congrès mondial sur la probation et la libération conditionnelle

Ne laisser personne de côté : renforcer la capacité communautaire

28 septembre au 1 octobre 2021 — **Delta Hotel - Ottawa (Ontario) Canada**

Veuillez présenter votre proposition à l'ACJP par courriel (ccja- acjp@rogers.com), par télécopieur (+1 613 725 3720) ou par la poste (320, avenue Parkdale, bureau 101, Ottawa (Ontario) Canada K1Y 4X9).

Vous êtes cordialement invités à présenter un résumé de présentation dans le cadre du 5e Congrès mondial sur la probation et la libération conditionnelle!

Cet évènement international est organisé par l'Association canadienne de justice pénale, en collaboration avec la Commission des libérations conditionnelles du Canada, Service correctionnel Canada, Sécurité publique Canada, et la Gendarmerie royale du Canada. L'évènement se tiendra au Delta Hotel, à Ottawa, en Ontario, au Canada. Pensez à participer à cette occasion de réseautage pour en savoir davantage sur les dernières avancées en matière de probation et de libération conditionnelle partout dans le monde.

Le thème de l'évènement sera « **Ne laisser personne de côté : renforcer la capacité communautaire** ». Dans le cadre de ce Congrès, on abordera les défis, les possibilités et les réussites touchant le renforcement de la capacité communautaire et le maintien de partenariats qui favorisent la réintégration efficace de divers groupes de délinquants dans un contexte mondial en évolution.

Des universitaires, des chercheurs, des étudiants, des organisations communautaires, des intervenants et des dirigeants politiques sont invités à présenter des propositions de présentation liée à l'un ou à plusieurs des sous-thèmes énumérés plus bas. Veuillez noter que les éléments des sous-thèmes ne sont pas exclusifs. D'autres sujets peuvent être ajoutés s'ils sont liés au thème principal « Ne laisser personne de côté : renforcer la capacité communautaire ».

APPEL DE COMMUNICATION

5e Congrès mondial sur la probation et la libération conditionnelle

Ne laisser personne de côté : renforcer la capacité communautaire

28 septembre au 1 octobre 2021 — **Delta Hotel - Ottawa (Ontario) Canada**

Veuillez présenter votre proposition à l'ACJP par courriel (ccja- acjp@rogers.com), par télécopieur (+1 613 725 3720) ou par la poste (320, avenue Parkdale, bureau 101, Ottawa (Ontario) Canada K1Y 4X9).

Sous-thèmes

- Délinquants ayant des besoins en santé mentale
- Minorités sur-représentées
- Délinquants âgés
- Délinquants handicapés
- Femmes délinquantes
- Délinquants radicalisés
- Formation du personnel
- Délinquants à risque élevé
- Partenariats
- Renforcement de la capacité communautaire
- Délinquants autochtones
- Jeunes délinquants
- Délinquants à contrôler
- Stratégies de sensibilisation du public

Types de présentation

- ATELIERS
- BREFS EXPOSÉS
- PRÉSENTATION D'AFFICHES DE CHERCHEURS
- DOCUMENTAIRES, COURTS MÉTRAGES, BALADOS

Organisé par l'Association canadienne de justice pénale en collaboration avec la Commission des libérations conditionnelles du Canada, Service correctionnel Canada, Sécurité publique Canada, et la Gendarmerie royale du Canada.

Probation Orders and their Purpose as a Sentencing Tool

Me FRANÇOIS BOILLAT-MADFOUNY
Criminal Law Graduate (LL.B., LL.M.)
Policy Review Committee Member – PRC (CCJA)

Policy Review Committee (PRC) member Francois Boillat-Madfouny explains that conditional release includes punishment in its purpose, but points out that the purpose of a probation order is different; although some conditions of a probation order may end up incurring punishment on a probationer as a consequence, it is illegal for a probation order to punish by design. Illustrating how case law has upheld the purpose of the probation order as defined in the Criminal Code [s 731], Boillat-Madfouny urge judges, prosecutors and defense counsel to apply restraint when crafting conditions (or ruling on breaches) in order to avoid over-criminalizing probationers.

For this edition of the *Justice Report*, I thought it would be appropriate to review how case law has defined the purpose of probation orders as a sentencing tool. Since I have no background at all in probation work itself nor any academic training on the benefits and effectiveness of probation orders on (e.g.) recidivism, my focus today lies exclusively in how the probation order works and how courts perceive its purpose as a sentencing tool.

HOW A PROBATION ORDER WORKS AS A SENTENCING TOOL

A probation order is not a sentence *per se*. It accompanies (or follows) any sentence and most frequently what is called a *suspended* sentence. Section 731 reads as follows:

> "**731 (1)** Where a person is convicted of an offence, a court may, having regard to the age and character of the offender, the nature of the offence and the circumstances surrounding its commission,
>
> **(a)** if no minimum punishment is prescribed by law, suspend the passing of sentence and direct that the offender be released on the conditions prescribed in a probation order; or
>
> **(b)** in addition to fining or sentencing the offender to imprisonment for a term not exceeding two years, direct that the offender comply with the conditions prescribed in a probation order.
>
> **(2)** A court may also make a probation order where it discharges an accused under subsection 730(1). " [1]

Certain conditions of a probation order are compulsory, such as the condition to reside at a specific address and advise the court of any change of address [732.1(2)]. Others are optional, notably including to abstain from communicating, directly or indirectly, with a specific person [732.1(3)]. In addition to the optional conditions, the *Code* allows the court to order that the probationer "comply with such other reasonable conditions as the court considers desirable […] for protecting society and for facilitating the offender's successful reintegration into the community" [732.1(3)h].

If the probationer does not respect one or more of these conditions, or commits a new offense, the courts can "revoke that order and impose any sentence that would have been imposed if the passing of sentence had not been suspended"

[732.2 (5) (d)]. This is why it is called a *suspended* sentence. Additionally (or instead), the probationer can be accused of failing to comply with a probation order [733.1].

THE PURPOSE OF PROBATION ORDERS

The *purpose* of a probation order is two-fold. First, it aims to rehabilitate an offender. In *R. v. Proulx*, the Supreme Court did a thorough analysis of *conditional* sentences [742.1] (aka, "served within the community"). Comparing the two, the Supreme Court concluded that conditional sentences have conditions aimed at punishment while probation orders serve essentially to rehabilitate:

> "[23] […] While a suspended sentence with probation is primarily a rehabilitative sentencing tool, the evidence suggests that Parliament intended a conditional sentence to address both punitive and rehabilitative objectives."[2]

However, the Court did recognize that some conditions (and their compliance) imposed within a probation order may have consequences that end up having a punitive effect on the probationer, although this is not its fundamental purpose:

> "[32] […] Apart from the wording of the provision, the innate character of a probation order is such that it seeks to influence the future behaviour of the offender. More specifically, it seeks to secure "the good conduct" of the offender and to deter him from committing other offences. It does not particularly seek to reflect the seriousness of the offence or the offender's degree of culpability. Nor does it particularly seek to fill the need for denunciation of the offence or the general deterrence of others to commit the same or other offences. Depending upon the specific conditions of the order there may well be a punitive aspect to a probation order, but punishment is not the dominant or an inherent purpose. It is perhaps not even a secondary purpose but more in the nature of a consequence of an offender's compliance with one or more of the specific conditions with which he or she may find it hard to comply."[3]

Consequently, conditions imposed within a probation order should never fundamentally aim at punishment, even though complying with those conditions may certainly have a punitive aspect. As the Court of Québec recently reminded:

> "[153] […] Obviously, there may be a strong (and legitimate) punitive effect to having to respect probation conditions, insofar as the offender is restricted in his behaviour. However, the punishment is a mere by-product of the probation; it is not its dominant or inherent purpose. In other words, the "punishment" lies more in the nature of a consequence of an offender's compliance with the conditions, which he may find it hard to comply.
>
> [154] Thus, the condition may be incidentally punitive. However, its punitive aspect must be consequential and not by design."[4]

Purely punitive conditions imposed through probation orders are illegal and go against the purpose of probation orders. Such conditions in probation orders have been struck down by many appellate courts across the country[5], including the Court of Appeal of Manitoba in *R. v. Singh*. The Court explained how "[t]he condition will withstand scrutiny, so long as the punitive aspect of the condition is consequential, and not by design"[6]. The Quebec Court of Appeal similarly struck down a curfew condition that seemed inherently punitive and did not contribute to rehabilitating the offender in any way[7]. Other conditions, such as requiring abstinence from alcohol or drug consumption, have been struck down when courts deemed that this consumption had played no part in the commission of the offence for which the probationer had been sentenced[8].

Secondly, in addition to rehabilitation, probation orders can also serve to protect the public[9]. As the British Columbian Court of Appeal explained, "[26] While probation is primarily considered as an important tool for rehabilitation, the legislation is also designed to protect the public while the offender is in the community."[10]

The Supreme Court reaffirmed this in *R. v. Shocker*:

> "[10] […] The probationer remains free to live in the community but certain restraints on his freedom are imposed for the purpose of facilitating his rehabilitation and protecting society."[11]

Essentially, case law clearly establishes that the conditions of a probation must serve either one of these goals – rehabilitation or protection of the public[12]. It is, however, not required that the condition serve *both* goals:

> "[28] A term of probation does not have to address both rehabilitation and protection of the public. In *R. v. Timmins*, 2006 BCCA 354 at para. 9, this Court concluded that a condition of probation is reasonable if it serves one or both of the stated purposes."[13]

In other words, a condition will be reasonable and legal if it is not designed for punishment and if "there [is] a nexus between the condition and the offender, the protection of the community and the offender's reintegration into the community"[14].

EXCESSIVE CONDITIONS: SETTING A PROBATIONER UP FOR FAILURE

A final word on the imposition of excessive conditions. Recently, the Supreme Court insisted on the importance of restraint when imposing judicial interim release conditions, and when prosecuting individuals for breach of those conditions[15]. The essential message was as follows: (1) limit the imposition of conditions that will set an accused up for failure and (over)criminalize behaviour that would not be criminal if it weren't for the condition; and (2) apply restraint when prosecuting breaches of such conditions.

Even though those comments were made in the context of judicial interim release, they also apply when determining the appropriate conditions to be imposed within a probation order. The British Court of Appeal insisted on this idea in *R. v. Singh* in 2016:

> "[28] It is trite to say that a sentencing judge ought not to set up an accused for failure as part of a court order. Too often, numerous conditions are attached to probation orders, which make compliance more difficult for the accused, but whose purpose is difficult to understand on the specific facts of the case. They are neither focussed on rehabilitation, nor does the evidence in the case substantiate their need for ensuring public safety."[16]

When judges, prosecutors and defense counsel craft conditions, we urge all to apply restraint in order to avoid setting a probationer up for failure. This does not mean to say that conditions are not often necessary and have a clear nexus between the probationer, the protection of the community and their rehabilitation. However, those that do not, and those that are *by design* focused on punishment, should not be included. ■

NOTES

1. *Criminal Code*, s. 731.
2. *R. v. Proulx*, 2000 SCC 5, para. 23 and 36. Conditions in the context of judicial interim release are also quite different and serve a completely different purpose. In such context, the purpose of the conditions must relate to the criteria set in section 515 (10) *Crim. C.*: ensuring attendance in court; the protection or safety of the public; or maintaining confidence in the administration of justice (*R. v. St-Cloud,* 2015 SCC 27).
3. *R. v. Proulx*, 2000 SCC 5, para. 32, citing *R. v. Taylor*, 1997 CanLII 9813 (SK CA).
4. *R. c. Edgar*, 2019 QCCQ 4821, para. 153. See also *R. v. Bosco*, 2016 BCCA 55, para. 55.
5. *R. v. Proulx*, 2000 SCC 5, para. 33. See also: *R. v. Shoker*, 2006 SCC 44, para. 13; *R. c. Edgar*, 2019 QCCQ 4821, para. 153; *R. c. Cormier*, 2016 QCCA 1489, para. 7; *R. v. Kirton*, 2007 MBCA 38, para. 11; *R. v. Traverse*, 2006 MBCA 7, para. 15; *R. v. Leschyshyn*, 2007 MBCA 41; *R. v. Goeujon*, 2006 BCCA 261; *R. v. Rawn*, 2012 ONCA 487.
6. *R. v. Singh*, 2016 MBCA 38, para. 15.
7. *R. c. Cormier*, 2016 QCCA 1489, para. 7. See also: *R. v. Dunn* (BJ), 2011 NBCA 19.
8. *R. v. Shoker*, 2006 SCC 44, para. 13. See also: *R. v. Kootenay*, 2000 ABCA; *R. v. Traverse*, 2006 MBCA 7.
9. *R. v. Shoker*, 2006 SCC 44, para. 10, 13.
10. *R. v. Bourque*, 2013 BCCA 447, para. 26.
11. *R. v. Shoker*, 2006 SCC 44, para. 10.
12. *R. v. Singh*, 2016 MBCA 38, para. 14, citing *R. v. Shoker*, 2006 SCC 44, para. 10; *R. v. Woroby* (TW), 2003 MBCA 41, para. 31; *R. v. Voong* (DM) et al, 2015 BCCA 285, para. 43.
13. *R. v. Bourque*, 2013 BCCA 447, para. 28. See also: *R. v. Badyal*, 2011 BCCA 211, para. 5; *R. v. Bosco*, 2016 BCCA 55, para. 55.
14. *R. v. Shoker*, 2006 SCC 44, para. 13. See also: *R. v. Singh*, 2016 MBCA 38, para. 15; *R. v. Badyal*, 2011 BCCA 211, para. 3, 5, 9; *R. v. Voong*, 2015 BCCA 285.
15. *R. v. Zora*, 2020 SCC 14; *R. v. Antic*, 2017 SCC 27.
16. *R. v. Singh*, 2016 MBCA 38, para. 28.

L'ordonnance de probation et ses fonctions dans le cadre de la détermination de la peine

Me FRANÇOIS BOILLAT-MADFOUNY
Diplômé en droit (LLB, LLM)
Membre du Comité d'examen des politiques – CEP (ACJP)

François Boillat-Madfouny, avocat et membre du Comité d'examen des politiques de l'ACJP, explore le rôle de l'ordonnance de probation et ses fonctions dans le cadre de la détermination de la peine. Plus spécifiquement, il note comment la fonction première des conditions imposées dans une telle ordonnance n'est pas de punir le probationnaire, bien que leur existence puisse nécessairement impliquer un certain aspect punitif dans ses conséquences. L'auteur conclut en invitant fortement les juges, les procureurs et les avocats de la défense à faire preuve de retenue lorsqu'ils élaborent des conditions afin d'éviter de criminaliser disproportionnellement les probationnaires.

LES MODALITÉS DE L'ORDONNANCE DE PROBATION

Une ordonnance de probation n'est pas une peine en soi. Plutôt, elle *accompagne* (ou suit) l'imposition d'une peine, notamment et fréquemment ce qu'on appelle une « sentence suspendue », c.-à-d. le fait de surseoir au prononcé de la peine. L'article 731 C.cr. se lit comme suit :

> **731 (1)** Lorsqu'une personne est déclarée coupable d'une infraction, le tribunal peut, vu l'âge et la réputation du délinquant, la nature de l'infraction et les circonstances dans lesquelles elle a été commise :
>
> > **a)** dans le cas d'une infraction autre qu'une infraction pour laquelle une peine minimale est prévue par la loi, surseoir au prononcé de la peine et ordonner que le délinquant soit libéré selon les conditions prévues dans une ordonnance de probation ;
> >
> > **b)** en plus d'infliger une amende au délinquant ou de le condamner à un emprisonnement maximal de deux ans, ordonner que le délinquant se conforme aux conditions prévues dans une ordonnance de probation.
>
> **(2)** Le tribunal peut aussi rendre une ordonnance de probation qui s'applique à l'accusé absous aux termes du paragraphe 730(1). »[1]

Dans le cadre de cette probation, certaines conditions sont obligatoires, telles que celles de résider à une adresse donnée et d'aviser le greffe de la Cour de tout changement [732.1(2)]. D'autres sont facultatives, telles que celle interdisant de communiquer, directement ou indirectement, avec une personne désignée [732.1(3)]. Le *Code criminel* permet également au Tribunal d'imposer toute condition « raisonnable[] qu'[il] considère souhaitable[] […] pour assurer la protection de la société et faciliter la réinsertion sociale du délinquant » [732.1(3)h].

Si le contrevenant ne respecte pas l'une ou l'autre condition, ou s'il commet une nouvelle infraction, le tribunal peut « révoquer l'ordonnance et infliger toute peine qui aurait pu être infligée si le prononcé de la peine n'avait pas été suspendu » [732.2 (5) (d)].

Voilà en fait la logique d'un *sursis* au prononcé de la peine. Par ailleurs, des accusations additionnelles peuvent également être portées pour défaut de s'être conformé à l'ordonnance de probation [733.1].

FONCTIONS D'UNE ORDONNANCE DE PROBATION

L'ordonnance de probation joue deux fonctions. D'abord, elle participe à la réhabilitation du contrevenant. Dans l'arrêt *R. c. Proulx*, la Cour suprême a sérieusement analysé les peines d'emprisonnement avec sursis [742.1], aussi connues sous le nom d' « emprisonnement dans la collectivité ». Pour se faire, elle a comparé son fonctionnement à celui de l'ordonnance de probation. Elle a conclu qu'alors que l'emprisonnement avec sursis comportait des conditions dont l'objectif était de *punir* le contrevenant, les conditions d'une ordonnance de probation cherchaient plutôt à faciliter sa réhabilitation :

> « [23] […] Alors que le sursis au prononcé de la peine avec mise en probation est principalement une mesure de réinsertion sociale, il semblerait que le législateur entendait que le sursis à l'emprisonnement vise à la fois des objectifs punitifs et des objectifs de réinsertion sociale. »[1]

Toutefois, la Cour est claire; les conditions d'une ordonnance de probation - et le respect de ces dernières - risquent d'avoir un aspect punitif, bien qu'il ne s'agisse pas du but fondamental de la probation :

> « [32] […] [TRADUCTION] Indépendamment du libellé de la disposition, l'ordonnance de probation vise foncièrement à influencer le comportement ultérieur du délinquant. Plus précisément, elle tend à assurer « la bonne conduite » du délinquant et à le dissuader de perpétrer d'autres infractions. *Elle n'a pas spécialement pour objet de refléter la gravité de l'infraction ou le degré de culpabilité du délinquant. Son but n'est pas non plus de dénoncer l'infraction ou de dissuader généralement autrui de perpétrer la même infraction ou d'en commettre d'autres. Selon les conditions précises dont elle assortie, l'ordonnance peut avoir un aspect punitif, mais la punition n'est pas son objectif dominant ou intrinsèque, ni même, peut être, un objectif secondaire. L'aspect punitif participe plutôt d'une conséquence de l'observation, par le délinquant, d'une ou de plusieurs conditions précises qu'il peut trouver difficiles à respecter*. [*Je souligne*.] »[2]

Ainsi, les conditions imposées dans le cadre d'une ordonnance de probation ne devraient jamais avoir comme but fondamental de punir le contrevenant. La Cour du Québec le rappelait récemment :

> « [153] […] Obviously, there may be a strong (and legitimate) punitive effect to having to respect probation conditions, insofar as the offender is restricted in his behaviour. However, the punishment is a mere by-product of the probation; it is not its dominant or inherent purpose. In other words, the "punishment" lies more in the nature of a consequence of an offender's compliance with the conditions, which he may find it hard to comply.
>
> [154] Thus, the condition may be incidentally punitive. However, its punitive aspect must be consequential and not by design. »[3] (notre soulignement)

De telles conditions axées sur la punition sont en fait illégales puisqu'elles vont à l'encontre de la logique de l'article 731 C.cr. Plusieurs ont d'ailleurs été invalidées par des cours d'appel canadiennes[4], notamment dans l'affaire *R. v. Singh*, où la Cour d'appel manitobaine explique que la condition résistera à l'examen, tant qu'elle n'est pas conçue pour être punitive, bien qu'elle puisse être quelque peu punitive dans ses conséquences[5]. Elle avait décidé que le couvre-feu imposé devrait être annulé puisqu'il n'était que punitif. La Cour d'appel du Québec a conclu similairement à l'égard d'une condition imposant un couvre-feu, qui selon la cour, ne contribuait aucunement à la réhabilitation du contrevenant de quelconque façon[6]. D'autres conditions, telles qu'interdire la consommation d'alcool ou de drogue, ont été invalidées au motif que la consommation n'a joué aucun rôle dans la commission de l'infraction pour laquelle le probationnaire avait été déclaré coupable[7].

Deuxièmement, en sus de participer à la réhabilitation du contrevenant, une probation permet également de protéger le public[8]. C'est ce que

la Cour d'appel de la Colombie-Britannique rappelle :

> « [26] While probation is primarily considered as an important tool for rehabilitation, the legislation is also designed to protect the public while the offender is in the community. »[9]

C'est également ce que la Cour suprême avait indiqué dans *R. c. Shocker* :

> « [10] […] Le probationnaire reste libre de vivre au sein de la collectivité, mais sa liberté est assujettie à certaines restrictions destinées à faciliter sa réadaptation et à assurer la protection de la société. »[10]

Bref, la jurisprudence prévoit essentiellement que si les conditions d'une ordonnance servent l'une de ces fonctions, à savoir la réhabilitation du contrevenant ou la protection de la société, elles seront considérées comme raisonnables et légales[11]. Toutefois, cela ne veut pas dire qu'elles doivent servir les *deux* fonctions simultanément :

> « [28] A term of probation does not have to address both rehabilitation and protection of the public. In *R. v. Timmins*, 2006 BCCA 354 at para. 9, this Court concluded that a condition of probation is reasonable if it serves one or both of the stated purposes. »[12]

Dit autrement, une condition sera raisonnable et légale si elle n'est pas conçue pour punir et s'il existe « un lien entre le délinquant, la protection de la société et la réinsertion sociale de ce délinquant »[13].

CONDITIONS EXCESSIVES : VOUER UN PROBATIONNAIRE À L'ÉCHEC

Un dernier mot sur l'imposition excessive de conditions et sur l'imposition de conditions excessives. Récemment, la Cour suprême du Canada a réaffirmé l'importance de faire preuve de retenue dans le cadre de l'élaboration des conditions de remises en liberté provisoire, ainsi que dans la judiciarisation des bris de ces conditions[14]. Le message de la Cour suprême est clair : (1) limiter l'imposition de conditions excessives qui voueront un prévenu à l'échec et qui surcriminalise la commission de gestes qui ne seraient pas criminels en l'absence de ces conditions ; (2) faire preuve de retenue dans la poursuite judiciaire du défaut de s'être conformé aux conditions imposées.

Bien que ces commentaires s'inscrivent dans le cadre des enquêtes sur remise en liberté provisoire, elles s'appliquent tout autant lorsqu'il appartient de déterminer les conditions d'une ordonnance de probation. La Cour d'appel de la Colombie-Britannique a tenu des propos judicieux sur ce point :

> « [28] It is trite to say that a sentencing judge ought not to set up an accused for failure as part of a court order. Too often, numerous conditions are attached to probation orders, which make compliance more difficult for the accused, but whose purpose is difficult to understand on the specific facts of the case. They are neither focussed on rehabilitation, nor does the evidence in the case substantiate their need for ensuring public safety. »[15]

Nous invitons fortement les juges, procureurs de la poursuite et avocats de la défense à faire preuve de retenue afin d'éviter de vouer à l'échec le respect de l'ordonnance de probation. Il est certain que plusieurs conditions sont fréquemment nécessaires et possèdent un lien clair entre le probationnaire, sa réhabilitation et la protection de la société. Toutefois, lorsque le lien n'est pas clair, ou lorsque la condition semble être conçue pour punir le contrevenant, elle ne devrait pas faire partie de l'ordonnance. ■

NOTES

1. *R. c. Proulx*, 2000 CSC 5, par. 23 et 36. Notons que les conditions imposées dans le cadre d'une remise en liberté provisoire jouent un rôle complètement différent. Dans un tel contexte, les conditions se doivent de servir l'un des trois motifs prévus au paragraphe 515(10) *C.cr.* : assurer la présence du prévenu au tribunal; assurer la protection et sécurité du public; maintenir la confiance du public dans l'administration de la justice (*R. c. St-Cloud*, 2015 CSC 27).
2. *R. c. Proulx*, 2000 CSC 5, par. 32, citant et traduisant *R. v. Taylor*, 1997 CanLII 9813 (SK CA).
3. *R. c. Edgar*, 2019 QCCQ 4821, par. 153. Voir aussi *R. v. Bosco*, 2016 BCCA 55, par. 55.
4. *R. c. Proulx*, 2000 CSC 5, par. 33. Voir aussi : *R. c. Shoker*, 2006 CSC 44, par. 13 ; *R. c. Edgar*, 2019 QCCQ 4821, par. 153 ; *R. c. Cormier*, 2016 QCCA 1489, par. 7 ; *R. v. Kirton*, 2007 MBCA 38, par. 11 ; *R. v. Traverse*, 2006 MBCA 7, par. 15 ; *R. v. Leschyshyn*, 2007 MBCA 41 ; *R. v. Goeujon*, 2006 BCCA 261 ; *R. v. Rawn*, 2012 ONCA 487.
5. R. v. Singh, 2016 MBCA 38, par. 15.
6. *R. c. Cormier*, 2016 QCCA 1489, par. 7. Voir aussi : *R. v. Dunn* (BJ), 2011 NBCA 19.
7. *R. c. Shoker*, 2006CSC 44, par. 13. Voir aussi : *R. v. Kootenay*, 2000 ABCA; *R. v. Traverse*, 2006 MBCA 7.
8. *R. c. Shoker*, 2006 CSC 44, par. 10, 13.
9. *R. v. Bourque*, 2013 BCCA 447, par. 26.
10. *R. c. Shoker*, 2006 CSC 44, par. 10.
11. *R. v. Singh*, 2016 MBCA 38, par. 14, citant *R. c. Shoker*, 2006 CSC 44, par. 10 ; *R. v. Woroby* (TW), 2003 MBCA 41, par. 31 ; *R. v. Voong* (DM) et al, 2015 BCCA 285, par. 43.
12. *R. v. Bourque*, 2013 BCCA 447, par. 28. Voir aussi : *R. v. Badyal*, 2011 BCCA 211, par. 5 ; *R. v. Bosco*, 2016 BCCA 55, par. 55.
13. *R. c. Shoker*, 2006 CSC 44, par. 13. Voir aussi : *R. v. Singh*, 2016 MBCA 38, par. 15 : *R. v. Bosco*, 2016 BCCA 55, par. 55 ; *R. v. Badyal*, 2011 BCCA 211, par. 3, 5, 9 ; *R. v. Voong*, 2015 BCCA 285.
14. *R. c. Zora*, 2020 CSC 14 ; *R. c. Antic*, 2017 CSC 27.

Helping Others to Help Themselves

GEORGE MYETTE
Executive Director, The Seventh Step Society of Canada

A founding member and current Executive Director of the 7th Step Society of Canada, George Myette explains the origins and evolution of this self-help organization dedicated to peer support and prevention of recidivism. Enumerating the guiding principles (i.e., the 7 steps to freedom) of the 7th Step Society of Canada within a framework of the concept of gradual, supported release from incarceration, Myette describes the conceptualization and implementation by provincial affiliates of community residential centres, self-help groups, public education, and volunteer training since the early 1970s. Myette, who assisted in the 1975 development of the Alberta Seventh Step Society as an agency with halfway houses in Calgary and Edmonton, illustrates how the Society's Calgary CRF (Graham House) offers an ideal setting and primarily houses federally incarcerated individuals released on Day Parole, Parole or Statutory Release with a residency condition.

"Knowing that my freedom depends upon my thoughts and actions, I hereby PLEDGE:

To face and accept the truth about myself,
To maintain my freedom,
To become a useful member of society,
To help others as I am now being helped."

1. **F**acing the truth about ourselves and the world around us, we decided we needed to change.
2. **R**ealizing there is a Power from which we can gain strength, we decided to use that Power.
3. **E**valuating ourselves by taking an honest self appraisal, we examined both our strengths and our weaknesses.
4. **E**ndeavoring to help ourselves overcome our weaknesses, we enlisted the aid of that Power to help us concentrate on our strengths.
5. **D**eciding that our FREEDOM is worth more that our resentments, we are using that Power to help free us from those resentments.
6. **O**bserving that daily progress is necessary, we set an attainable goal, towards which we can work each day.
7. **M**aintaining our own FREEDOM, we pledge ourselves to help others as we have been helped.

Thus begins the start of every 7th Step Core Group meeting including reading the 7 Steps to Freedom, which are guiding principles for members of the 7th Step Society. These Core Groups operate in the community and in correctional institutions and are comprised of ex-inmates, non-offenders and inmates who are currently serving their sentences. The 7th Step Society is a self-help organization dedicated to peer support and to the prevention of recidivism.

The Society was started in the United States in the early 1960s by an ex-inmate, Bill Sands, who had overcome adversity in his early life to become a successful entrepreneur and published author (My Shadow Ran Fast and The Seventh Step). He believed that most inmates were, like him, capable of change and just needed the spark that would ignite a desire to leave their criminal lifestyle behind and move forward in a positive way. With the help of his wife and a dedicated prison chaplain, Sands formulated the 7 Steps to Freedom and introduced a program of peer support to the Kansas State Penitentiary. Sands recognized that peers could serve a valuable role in delivering a message of hope and change and that successful ex-inmates

could serve as credible role models for serving inmates. Due to a lack of existing pre-release programs in most institutions in the United Sates, the program was supported by many community volunteers, most of whom had never been in conflict with the law.

The 7th Step program quickly gained credibility and acceptance, spread to prisons across the United States and was eventually introduced to Canada in 1967 in Haney, BC. The program quickly gained traction in several prisons in the lower mainland of BC and then spread to Alberta and Ontario, through the efforts of ex-inmates in conjunction with non-offender supporters who were active in the field of corrections. Persons of note in the early days of 7th Step are Tom Gordon in BC, Pat Graham in Alberta and Rev. Charles Bell in Ontario. These men established self-help groups in various penitentiaries and jails as well as various community-based programs such as halfway houses. In 1981, The 7th Step Society of Canada was incorporated, as an umbrella body to reinforce the development of provincial chapters which could better support local groups in their respective areas.

The purpose of the self-help Core Groups is to provide a regular forum within the institution and the community for inmates and ex-inmates to gather and give mutual support in the reintegration process. This is particularly meaningful for long-term recidivists who have not responded well to conventional corrections programs and have an innate distrust of authority but do have a desire to change their lifestyle. Their 7th Step peers reinforce realistic thinking and the need to accept that it is they, and not the world around them, who need to change. Through self examination and acceptance, group members can begin the process of looking at personal development, realistic release planning and the need to trust others. Peer support is a powerful tool in developing this, and the 7th Step groups operate on a model of trust and commitment to accomplish these goals.

The 7th Step institutional Core groups are self selecting and recruit potential members through referrals by existing group members who believe that someone is ready to make a sincere commitment to change and will not jeopardize the integrity of the group by negative behaviour or breach of trust. The groups practice a method of support, but they also will confront someone who is denying the truth about themselves and their behaviour and ask for a realistic commitment to change. Ex-inmates and non-offenders who attend these meetings share their truths and provide positive examples of lifestyle and behaviour changes that will assist the serving inmate to make a successful re-entry to society.

Self Help and Peer Support is not unique to 7th Step. Many other groups such as AA, NA, GA have operated successfully for decades; but what makes 7th Step unique is that it uses the inmate subculture in a positive way to overcome unrealistic thinking that has built up in people over many years and reduced both their self esteem and trust of authority. Unlike other self-help groups, 7th Step members will challenge the thinking and views of their fellow members and help them to strip away the façade of unrealistic thinking they may have built around themselves and make the necessary changes required to get out of prison and stay out. This process eventually establishes trust amongst the group members and allows them to make commitments that they are able to keep. These are the attainable goals referred to in Step 6.

The 7th Step Society of Canada is a largely volunteer driven organization but does receive a sustaining grant from Public Safety Canada to support volunteer development, public education and to formulate input for public policy development. The National Board of Directors is comprised of non-offenders and ex-offenders who represent the various provinces where 7th Step is currently active (British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland). Alberta is currently the only province to have fully funded programs, and it operates a 35-bed halfway house (Community Residential Facility) in Calgary, a Public Legal Education program and a structured Personal development program (Taking Responsibility©) that is based around the 7 Steps to Freedom and was originally developed by a 7th Step volunteer at the Burnside Correctional Centre in Nova Scotia.

Gradual, supported release from incarceration is a concept fully supported by 7th Step. Preparation for re-entry to the “real world” is a big part of the discussions in the inside groups of 7th Step prior

to an inmate's release. Ex-offender volunteers talk about the "culture shock" they experienced after release and share their lived experience in dealing with the realities of overcoming institutionalization. The Calgary CRF (Graham House) was established in 1975 in a rented facility but a purpose-built structure was opened in 1977 and has operated successfully since that time. This CRF (Community Residential Facility) is located in central Calgary in a mixed-use residential community with good public transportation—an ideal setting for individuals who have been released from incarceration. The CRF primarily houses federally incarcerated individuals who have been released on Day Parole, Parole or Statutory Release with a residency condition. There is 24-hour supervision by trained counselors and the facility provides full room and board.

The CRF program is employment based and residents are encouraged and assisted to find employment. There are graduated levels of liberty and privileges as the residents show acceptance of responsibility, and the CRF staff work very closely with the CSC Parole Service. Preference is given to 7th Step members who have participated in institutional Core Groups but residency is open to any federal offender with the exception of sexual offenders due to an agreement with the local community and to maintain a degree of comfort for other residents, many of whom are recidivists or have themselves been victims of sexual abuse. The overarching emphasis in the CRF is based on the 7th Step philosophy of taking responsibility and thinking realistically, and the structured "Taking Responsibility©" program is offered on a rotating 8 week basis, once per week.

The 7th Step Society of Canada encourages its various chapters to focus on peer support and self help in all of their programs and offers support where it can. The National organization regularly holds public forums in communities across Canada to provide public education on the justice system, self help and community engagement. The Society is dedicated to preventing recidivism and recruits non-offenders, ex-offenders and professionals to achieve its goals. 7th Step is not a faith-based organization but is based on the faith that people can change. The 7 Steps to Freedom speak for themselves and have been the source of hope for people in conflict with the law for over 50 years.

For more information on the national organization and provincial chapters, visit www.7thstep.ca. ■

RÉSUMÉ

Helping Others To Help Themselves

GEORGE MYETTE
Directeur général, The Seventh Step Society of Canada

Membre fondateur et directeur général actuel de l'organisme 7th Step Society of Canada, George Myette explique l'origine et l'évolution de cet organisme d'entraide voué au soutien par les pairs et à la prévention du récidivisme. M. Myette présente les principes directeurs (c. à d. les 7 étapes vers la liberté) de la 7th Step Society of Canada dans le cadre d'un concept de libération graduelle et soutenue de l'incarcération. Il décrit également la conceptualisation et la mise en œuvre depuis le début des années 1970 de centres résidentiels communautaires, de groupes d'entraide, d'occasions de sensibilisation du public et de formation de bénévoles par des associations provinciales affiliées. M. Myette, qui a collaboré en 1975 à la mise en place de l'Alberta Seventh Step Society en tant qu'organisme comptant des maisons de transition à Calgary et à Edmonton, illustre la manière dont le centre résidentiel communautaire de la Société, à Calgary (Graham House), constitue un milieu idéal qui accueille principalement des personnes détenues sous responsabilité fédérale ayant obtenu une semi liberté, une libération conditionnelle ou une libération d'office avec assignation à résidence.

Deaf offenders: understanding and meeting the needs of this unique population as inmates and parolees

DR. TRACEY BONE
MSW, RSW

ABOUT THE AUTHOR: Dr. Bone is an oft-cited pioneer of research pertaining to the attitudinal, cultural and communicative barriers faced by Deaf Canadians within the hearing criminal justice system (see Bone, 1998). A professor in the Faculty of Social Work at the University of Manitoba, Dr. Bone teaches a variety of courses in both the undergraduate and graduate programs, including the Criminal Justice Field Focus course for undergraduate Social Work students. Dr. Bone is well-positioned to teach this course following a 28-year career with the Correctional Service of Canada, commencing in the role of Parole Officer. Dr. Bone is a dedicated researcher published in the areas of mental health, Deaf mental health, disability, and forensic mental health. Consult the University of Manitoba, Faculty of Social Work website for more on Dr. Tracey Bone's research and publications.

Dr. Bone points out that Deaf individuals, those for whom ASL is their first or preferred language, have unique needs that challenge the current criminal justice system. Advancing a human rights perspective, Bone points out that it is incumbent upon the criminal justice system as a whole and its constituent parts to ensure staff are provided appropriate training that promotes and advances the human rights of Deaf people. An oft-cited pioneer of research pertaining to the attitudinal, cultural and communicative barriers that Deaf Canadians continue to face, she also created two video resources for the Correctional Service of Canada in 2018 to enhance staff understanding of the issues related to Deaf offenders. Dr. Bone asks a pertinent question: are staff taking advantage of these tools to enhance their cultural competence with this population?

INTRODUCING THE DEAF EXPERIENCE

There are a number of unique attitudinal, environmental and systemic barriers that Deaf individuals will encounter within the criminal justice system. The challenges begin with the simple reality that deafness is an invisible disability. Until or unless a Deaf person, whose first language is Sign Language, communicates it is not obvious that they are Deaf. I will use this article to introduce the unique Deaf experience, and the systemic and attitudinal barriers that converge to disable the Deaf individual throughout all aspects of the criminal justice system, from arrest, through the courts, incarceration and on conditional release. The aim of this article is to enhance awareness and highlight strategies necessary to support the human rights of Deaf offenders in the criminal justice system.

My interest in addressing the unique Deaf experience in the criminal justice system struck in 1998 when completing my Master of Social Work degree at the University of Manitoba (Bone, 1998). At the time, I had been employed as a Community Parole Officer in the Winnipeg District Parole Office for some 14 years. The youngest sister of a profoundly Deaf brother whose first language is American Sign Language (ASL), I myself was fluent in ASL. Because of that unique skill, I was assigned parole supervision of any Deaf inmate, provincially or federally, who sought conditional

release to the Winnipeg district area. Admittedly, the Deaf community in Canada is small, with unofficial estimates by the Canadian Association of the Deaf (CAD) in 2015 at approximately 350, 000 Deaf Canadians (Canadian Association of the Deaf, 2015c). Regardless of community size, the needs are unique and meeting them requires a targeted approach. Deaf offenders report cultural discrimination, often due to lack of awareness of Deaf culture and language. They also report systemic failures due to a unique form of oppression from the hearing community (Meadow-Orlans & Eating, 2000), namely, audism.

Audism, first coined in 1975 by Deaf scholar Tom Humphries, is "the notion that one is superior based on one's ability to hear or behave in the manner of one who hears" (H-Dirksen, L Bauman, 2004). This sense of superiority by those who identify as hearing results in a lack of respect for the unique dynamics of those who depend on signed language rather than a spoken language for communication. There is often a reluctance to acknowledge, let alone accommodate the unique needs of Sign Language users. For example, Deaf inmates report staff expectations of their being able to 'simply' communicate through lip-reading or written English. Misunderstandings about the assumed ability of all Deaf people to 'read lips' or instantly comprehend written texts places unrealistic expectations on the Deaf person to communicate in modes and a language (e.g., English versus American Sign Language) in which they may have little competence let alone adequate reading comprehension. These exigencies were reported during my supervision of Deaf parolees, though also in the author's subsequent 2018 engagement with an incarcerated Deaf person. They were also reported in a research study for the Canadian Association of the Deaf (Russell, Chovaz & Beaudreault, 2018), a full twenty years after my 1998 study.

SYSTEMIC BARRIERS FOR DEAF PEOPLE WITHIN THE CRIMINAL JUSTICE SYSTEM

I will use a case example to highlight the systemic barriers. Joe, not his real name, was the only Deaf person in his immediate and extended family. ASL was his first language. While some family members knew a small number of "home" signs, defined as gestures developed within the family and understood only within that family, he lived in a communication bubble. There were no ASL - English interpreters available in the community and no technology available at the time to facilitate any form of two-way communication between him and his community. Unemployment was high there and Joe, like many others, developed an alcohol addiction. Though addiction resources were occasionally available in the community, they were not accessible for Joe due to the lack of ASL - English interpreters. Joe's drinking led to repeated involvements with the local police authorities, with him eventually amassing a record of more than 45 convictions. Contributing to this record was a failure of police authorities to acknowledge his unique communication needs. When police were called to the scene, they often approached Joe from the rear. He couldn't hear the officer calling his name, and thus reacted defensively when the officer grabbed him by the arm or shoulder, unintentionally striking the officer. When the offender later attended court, and moved through the sentencing process, he did so without an interpreter. Incarceration was no better as qualified interpreters were rarely provided, with institutions citing unreasonable burden (i.e. interpreter costs) as the reason. Through every step of the process, the system failed to accommodate Joe's unique communication needs by refusing to provide a qualified ASL - English Interpreter.

Deaf people experience isolation in custody, as they are often the only inmate who communicates through Sign Language. They are often denied the opportunity for programming because of the institution's reluctance to provide qualified interpreter services. This reluctance to provide interpreter services extends to case management, disciplinary, programming and other proceedings, including parole hearings. A participant in my 1998 study reported through an ASL - English interpreter that he was discriminated against by virtue of his use of ASL. He reported, "In here, NOTHING, INTERPRETER – NOTHING, PHONE – NOTHING" (Bone, 1998, p. 88). A second Deaf inmate reported, "Just because I am Deaf, they DISCRIMINATE against me" (ibid). Deaf offenders often serve a longer portion of their sentence prior to release, as they are unable to attend the very programming that would reduce their risk and address their criminogenic needs. Deaf offenders are isolated from the community when institutions fail to accommodate their two-way communication with

family members and others." Deaf prisoners are also often expected to rely on fellow inmates to serve as informal interpreters, placing them in a precarious position of sharing confidential information with other inmates that could be used against them in the future. These systemic failures, originally reported by the writer in 1998, were reported to the writer anew in 2018 by a Deaf inmate, and in the above-referenced report (Russell, Chovaz & Beaudreault, 2018) for the CAD.

STRATEGIES TO ENHANCE THE CONDITIONAL RELEASE EXPERIENCE FOR DEAF PAROLEES

Back to Joe—as addiction programming was not made accessible for Joe, he had no opportunity to reduce his risk to reoffend, so remained in prison until his Statutory Release Date. As his Parole Officer, I was able to communicate directly with him in ASL. I reviewed all the necessary release documents in ASL and answered questions in the language that provided him the opportunity to actively engage in his release process. I met with the Community Residential Facility staff to explain his unique communication needs and, with Joe, created a small handbook of the most common ASL signs he and the staff could use to communicate effectively. The handbook offered Joe a sense of dignity and respect, and an opportunity for independent communication. Joe also got the opportunity to explain to house staff the importance of enabling closed captioning on the CRF television so he too could watch the news and enjoy programming otherwise unavailable to him because he was Deaf. Early on in his release, I sought permission for the purchase of a device allowing direct two-way communication between Joe and me via telephone. Though now obsolete, that device provided Joe the dignity and independence easily experienced by his hearing counterparts. Again, these same issues were reported to the writer in a 2018 meeting with a provincially incarcerated Deaf inmate.

To be clear, Joe's demons had not been erased because I could communicate with him in ASL. Joe was unable to find work. Once, when I went to his rooming house for a weekly appointment, I found him walking down the back lane. As he could not respond to my calling his name, I approached him from the side to get his attention. It became clear he was intoxicated. I informed him, through ASL, that his use of alcohol represented a breach of his special parole condition, his release would be suspended, and he returned to custody. He understood and cooperated fully with the suspension process. When the police arrived to arrest him, they moved to handcuff him behind his back. I explained to the officer that Joe was Deaf and the handcuffs would render him unable to communicate. Though Joe was being fully cooperative, the officer advised he had 'no option'. I wonder if he puts tape over the mouths of hearing offenders as he arrests them, because in effect he was doing exactly that to Joe.

The multiple challenges for Deaf people across the criminal justice system are not new. There is limited knowledge among the general public about the audiological experience of deafness (the noun "deaf" commonly spelt with a small d), and even less about the distinct culture of the Deaf or membership in the Deaf community (commonly spelt using a capital D - Deaf). There is little understanding that ASL is a manual language that incorporates body movement, facial expression and specific hand shapes and movements to convey meaning (NIDCD, 2017). Also little understood are the behavioural factors commonly associated with this manual language. For example, waving hands, stomping on the floor, flicking lights on and off, and banging on the table are common behavioral strategies Deaf people use to gain another Deaf person's attention (Metro South, 2016, p. 7). These are not signs of aggression, but rather behaviors used by many who depend on a visual language for communication (Bone, 2018). In addition, visual language users look for visual cues as they scan the environment for signs of danger. Correctional officers reported to the author they viewed the constant scanning of the environment as 'suspicious'.

STRATEGIES TO FACILITATE EFFECTIVE TWO-WAY COMMUNICATION TO ENHANCE SUCCESSFUL ENGAGEMENT OF DEAF PEOPLE

The Canadian Association of the Deaf reports that the most effective way to enhance accurate two-way communication between a signing Deaf person and a non-Deaf person is through a qualified, certified ASL - English interpreter (CAD 2015b). To enhance accuracy, the interpreter must be uniquely trained in the specific field in which they are interpreting, in this case in the field of criminal justice. The seating arrangement in meetings

involving an ASL - English interpreter is important. The interpreter must be seated *beside* the hearing person so the Deaf person can easily view both the speaker and interpreter. The room must be adequately lit to reduce eyestrain for both the interpreter and Deaf signer. No participant should be seated in front of a bright light source such as a window as that can detract from their ability to view the person. Lastly, as interpreting is a physically and mentally draining process for the interpreter, there are limits as to the length of time an interpreter can offer their services at one sitting. If a meeting will extend beyond one hour, which is common in a case management meeting or parole board hearing, two interpreters must be booked and share the interpreting responsibilities (Bone, 2018). The author also recommends the completion of a Pre- and Post-Assessment Meeting with Interpreter checklist to facilitate the successful engagement of Deaf service users in the case management process (Bone, 2018, p. 75 – 76).

CONCLUSION

Deaf individuals, whose first language is ASL, present many unique social justice challenges to the criminal justice system. From a human rights perspective, it is incumbent upon the criminal justice system as a whole, and its constituent parts, to ensure staff are provided appropriate training that promotes and advances the human rights of Deaf people. Invited to update the Correctional Service of Canada's online training content in relation to Deaf and hard of hearing offenders in 2018, I created two distinct video resources to enhance staff understanding of the issues related to Deaf offenders. The question remains—are staff taking advantage of these tools to enhance their awareness? ■

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RÉSUMÉ

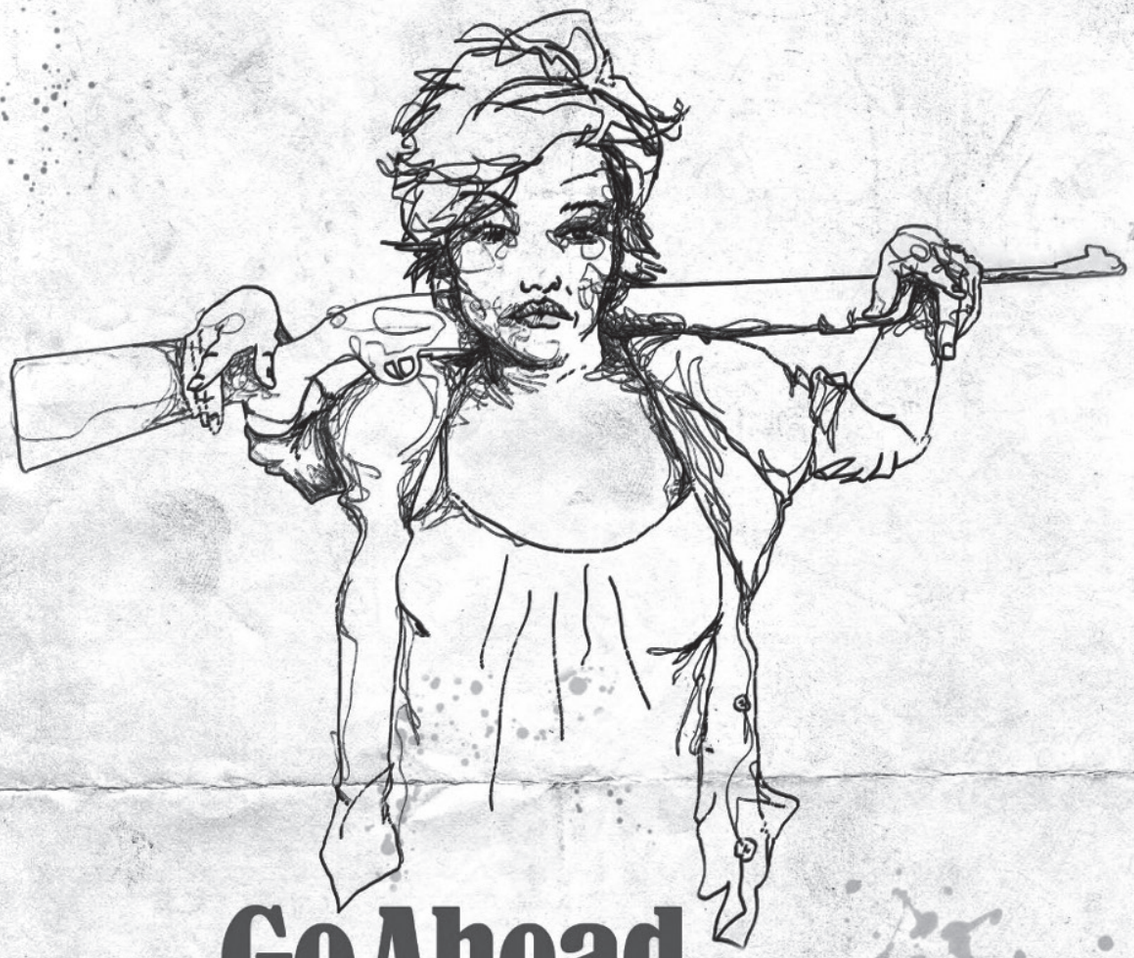
Deaf offenders: understanding and meeting the needs of this unique population as inmates and parolees

PROFESSEURE TRACEY BONE
Maîtrise en travail social, travailleuse sociale autorisée

La professeure Bone écrit « Sourd » avec un « S » majuscule et fait remarquer que les personnes Sourdes, dont le langage ASL est leur langue première ou préférée, ont des besoins uniques qui représentent un défi pour le système de justice pénale actuel. La professeure Bone propose une perspective de droits de la personne et précise qu'il incombe au système de justice pénale dans son ensemble et à ses institutions de garantir que le personnel reçoit une formation appropriée qui favorise et fait valoir les droits des personnes Sourdes. Pionnière souvent citée de la recherche portant sur les obstacles comportementaux, culturels et de communication auxquels les Canadiens Sourds sont toujours confrontés, la professeure Bone a également créé en 2018 deux ressources vidéo à l'intention de Service correctionnel du Canada afin de garantir que le personnel comprenne les enjeux liés aux contrevenants Sourds. La professeure Bone pose une question pertinente : le personnel se prévaut il de ces ressources uniques pour améliorer ses compétences culturelles auprès de cette population?

"Former probation officer Doug Heckbert reminds us that when people commit a crime, they are criminal only in that moment. They have lives and ambitions beyond their crime."

— HOWARD SAPERS, *Correctional Investigator of Canada (ret.)*



Go Ahead and Shoot Me!

And Other True Cases About Ordinary Criminals

Doug Heckbert

Foreword by Howard Sapers

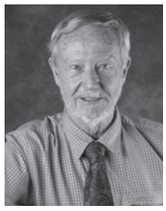
Afterword by Det. Debbie J. Doyle (ret.)

BOOK 7 IN THE DURVILE TRUE CASES SERIES

Go Ahead and Shoot Me! And Other True Cases About Ordinary Criminals

Durvile Publications Ltd. (2020).

DOUG HECKBERT



ABOUT THE AUTHOR: "Doug Heckbert holds a BA and MA from the University of Alberta. His work experience includes probation officer and prison caseworker with Alberta Correctional Services; parole officer with the National Parole Service; staff trainer and program director with Native Counseling Services of Alberta; and instructor with MacEwan University." As former Correctional Investigator of Canada (2001-2016), Howard Sapers, writes in the book's Foreword, "Former probation officer Doug Heckbert reminds us that when people commit a crime they are criminal only in that moment. They have lives and ambitions beyond their crime" – Durvile Publications Ltd. (2020).

Doug Heckbert offers insights into his book Go Ahead and Shoot Me!, which is filled with moments of levity and heartfelt compassion and offers a veritable course in probation/parole (i.e., community corrections) at every level replete with interesting observations regarding systemic change. In this article, Heckbert presents criminological theory tempered by his expert understanding of the criminal justice system alongside a selection of testimonials from his book, which evidences gaps in the justice system and a number of social ills that have arisen in recent decades and together may be engendering criminal behaviour in some people. Go Ahead and Shoot Me! raises a number of powerful questions; for example, "do we, as parents, family members, community members and corrections workers set our expectations too low? If we expected more, people might well rise to the occasion". Thus, while the testimonials in this book constitute stories of despair they become stories of hope as the author depicts their return to normalcy. By contextualizing these reflections with his holistic understanding of the criminal justice system, Doug Heckbert also offers clarity and hope to the public about rehabilitation and prevention beyond the prison system.

This book is based on some of my experiences as a probation officer. Many friends, relatives and acquaintances often asked me about the people I encountered as a PO: "What did they do? What are they like? How can you deal with those criminals?" Whenever possible, I would respond in a general way, maintaining confidentiality, of course, and briefly explaining the crimes they committed, some common features (in those days, mainly males in their teens or early twenties, almost always with peers, often under the influence of drugs or alcohol), and that I found them to be interesting people who got themselves into interesting situations. I also would repeat that a common expression I heard from people who committed crime: "That was pretty stupid, wasn't it?"

The idea of writing a book about some of my experiences floated around in my mind for many years. When I came across the True Cases series at Durvile Publications it dawned on me that this was a perfect model for my book – true stories of some of the actual cases I had dealt with. In discussions with Lorene Shyba of Durvile, we agreed on a two-part book: Part 1 dealing with cases and

experiences I had as a probation officer and Part 2 dealing with some contemporary cases involving people who had recently been in court, were on parole or had been in prison.

Another fact I would deal with in the book is that the general public gets most of its information about crime and criminal justice from the media – radio, TV, newspapers and, now, social media. Much of this information focuses on spectacular, horrific incidents and is often incomplete and sometimes downright false (like murderers getting a 25 year sentence). I need the reader to see a more complete picture of a person who commits crime, not just a headline and an account of the crime in the media; there is much more to an offender than just their criminal behavior.

"ROGER SAID 'GO AHEAD AND SHOOT ME!'"

The title of my book emerged from a statement made by Roger, the husband of Sally, a woman I supervised on probation. I learned she had initially been charged with attempted murder but the crown prosecutor later reduced the charge to dangerous use of a firearm and she was placed on probation for 12 months. During our first interview, I gathered information about her – she was married, about forty years old, worked part-time, had two children in high school, had a high school education, was generally in good health and did not have a previous criminal record. The family lived in a well-maintained, older home in a quiet residential neighborhood in the city.

When I turned our attention to the offence for which she was placed on probation, I wasn't sure what to expect: the charge of attempted murder is extremely serious yet being placed on probation is relatively common and ordinary, so what happened here? What I found out was that one evening Roger arrived home drunk, Sally was furious, they got into an argument with lots of shouting, swearing and screaming and she threatened to kill him. Without giving away all the details in the book, she ordered him to go get his rifle from the basement, then go back and get some bullets for it, and then load the rifle, as she had no idea how to do so. Roger cooperated, even taking the safety off for her and then he yelled: "Go ahead and shoot me!"

SO SALLY DID!

The bullet struck Roger in the shoulder, missed hitting bones and major arteries, and slammed into the wall of their living room. It exited the wall, penetrated the exterior wall of the house next door and bounced around the neighbor's kitchen, eventually coming to rest on the floor.

Police were called and the neighborhood was placed in lockdown as a public safety precaution. Police cars swarmed the area and officers fanned out to alert residents to stay indoors and away from windows. The officer assigned to contact the residence next to where the bullet stopped found Roger bleeding, in shock and slumped on his living room floor. Sally was sitting in the kitchen, stunned by what had happened. Upon questioning, she was composed enough to give a statement of what had just happened. An ambulance was called to take Roger to hospital; Sally was arrested and taken to police headquarters where she was charged with attempted murder and placed in a cell.

Sally's case wound its way through court for a year. She pleaded guilty and was placed on probation for 12 months. I met with her a few days after she was sentenced.

At the conclusion of my first meeting with the couple, I looked at Roger and said: "You know, you should have been charged with stupidity. You're the one who should be on probation, not your wife." Roger replied sheepishly: "Ya, that was pretty stupid." and hung his head.

Sally completed her probation, carefully following all the conditions. Roger quit drinking and going out for drinks with his co-workers; he also gave away his rifles.

So far as I know, Sally never appeared in court again.

This story raises some interesting points. No doubt the media reported the lockdown, the enhanced police presence in the area, a man had been shot and a woman had been arrested and charged. There may have been some media attention about the court case at first, but likely not as the case worked its way through court. I do not recall, however, any media coverage of the sentencing. This most likely was not deemed a current newsworthy event, especially as it was so long after the initial incident.

The public would be left with the impression of a very serious incident involving a serious crime. This is in keeping with trends for the majority of media

coverage, aiming to inform the public of horrific, spectacular incidents that leave us stunned by what has happened and concerned about public safety. Fleming (Siegel and McCormick 2020, p. 99) refers to a study finding that "...prominent coverage in such media-driven murder cases as those of Clifford Olson, Paul Bernardo and Karla Homolka, and Robert Pickton create fear within the public out of proportion to their incidence" (1). In Sally's case, the public would never learn that she successfully completed her period of probation or that this required her taking counselling.

Yet most crime is not horrific or spectacular. For those of us working in law enforcement, the courts or corrections, a lot of crime often seems common or typical, rather ordinary, if you will. Siegel and McCormick (p. 58) reprint a line chart from Statistics Canada: "Police-reported crime rates, 1962 - 2016". It shows that the rate for violent crimes has consistently been significantly less than rates for other crimes and property crimes (2). Similarly, Statistics Canada (Police-reported crime statistics in Canada, 2018) reports over 2 million police-reported Criminal Code incidents, including 651 homicides in 2018 (3) So, while homicide makes up less than 1 % of crimes committed in Canada, it garners a significant amount of media coverage of crime. (4)

Other cases in *Go Ahead and Shoot Me!* will serve as helpful pointers to some of the issues related to probation and parole vis-a-vis staff training and public education.

One case, Ron's, raises some interesting dilemmas: how much discretion is to be used and what principles guide its use? In corrections, there is room for the use of discretion. In Ron's case, he was on probation for stealing sporting goods from a department store. Upon conviction, which seemed to be a wake-up call for Ron, he settled down at home, attended school full-time, severed his ties with the co-accused, worked part-time in the family business and reported regularly to me. One day, he phoned and asked me to come to his home. He led me to his room in the basement and opened the door. I could see the room was full of sporting goods. He stated: "All this stuff is stolen; what should I do with it?". It seemed like I stood there a very long time , thinking of how to respond to him. Eventually I said, "I'll come back next week – all this stuff better be gone". With that, I returned to my office and sought the advice of a veteran co-worker who, after a few questions and a lot of thought, indicated that if I was confident about my decision, it probably was a good one. Clearly I could have called the police, which would have led to the laying of more charges and that would most likely have led to a prison sentence. I chose not to do that. Instead, I chose to see Ron as having turned his life around and opted for no further action. This decision had been supported by a trusted colleague but others may not have sided with me. Ron completed his probation, obtained a pardon (now known as a record suspension) and moved up the ladder in the family business to assume a prominent leadership position. He was also heavily involved in the community. I am comfortable that my use of discretion in this manner was justifiable and effective.

> *"Our criminal justice system relies upon public confidence for its legitimacy. For the public to be confident, it must be informed. Sadly, too much of the public discourse is distorted by fear mongering, half-truths, outright lies, and the manufacture of entertainment. Go Ahead and Shoot Me! presents an antidote to the misinformation about crime and justice. While it focuses on only one component of the system, community corrections, its content can easily be broadly applied. Readers become more knowledgeable about how the system works, some of its frailties and how discretion and judgment are just as important as rules and procedures. Understanding this leads to an appreciation of not only the challenges associated with the administration of justice, but also of the principles such as restraint and proportionality upon which it is based".*
>
> (Excerpt from Howard Sapers' Foreword to *Go Ahead and Shoot Me!*).

SO FAR SO GOOD FOR JOSEPH

In another case featured in Part 2 of *Go Ahead and Shoot Me!* dealing with contemporary cases, Joseph was sentenced to a penitentiary term for his involvement in a home invasion. For many years, he had been dealing drugs and working part-time. Once his life began to unravel even more with the serious criminal charges, he quit drinking and using drugs while on bail for two years. Shortly after being sentenced, he was transferred to a healing center and

did well there. He experienced day parole, which also went well, then was released on full parole. At that point, he was steadily employed as a construction laborer and living with his fiancée. At work, he was promoted to foreman and was adapting quite well to this new role. He found the new responsibilities kept him awake at night so he went to his doctor and obtained a prescription for medical cannabis to help him sleep. Joseph's parole officer reported that he had to continually work with him to ensure he didn't blur the lines in his relationships – was a friend really a friend or might Joseph be manipulated by this acquaintance to do some things that would jeopardize his parole? As well, was the approved medical use of cannabis a slippery slope that could return Joseph to using street drugs again? My conclusion in the book was "so far, so good", for Joseph but the parole officer may have had some legitimate concerns in terms of his integration into the community.

SMALL STEPS

Other cases in the book, such as Paula and Ryan in Part 2, saw repeated failures on parole. They explained their lack of success as not being ready to change, as still being entrenched in the street-drug lifestyle and mentality even when in prison. They both indicated at some point "being done" with the street-drug lifestyle and mentality; then they were ready to change, to learn a more normal way of living. Paula spoke about her life, which included 22 years in the youth and adult justice systems. She said a few people, including correctional officers, a police officer and a judge had planted seeds in her mind that things could be different for her. These comments gave her hope and became very important re-enforcements when she decided "she was done" with her old lifestyle. This idea of "planting seeds" should be taken to heart by those working in criminal justice. Maybe we need to focus more on helping offenders achieve small, achievable steps towards normalcy than expecting complete turn-arounds as captured in the concept of rehabilitation.

And maybe we in criminal justice can inform the public about the realities of our work, rather than leaving it up to the media. Indeed, the public might be less critical of corrections if it had a better understanding of what we can and cannot do, of when we do protect the public and when we do assist offenders to turn their lives around. I recall the exercises probation and parole went through in the 1990s to develop organizational vision statements and mission statements. For me, the big take-away from these statements was the creation of awareness that personal change in offenders is their responsibility, not that of the organizations that work with them. Our job, as members of correctional organizations, is to assist in the transformation – we can help but, in the end, it is up to the individual.

"An important goal of the criminological enterprise is to create valid and accurate theories of crime causation". (Siegel & McCormick, 2020, p. 131). In Sally's case, we can wonder if trait theories might explain why she shot Roger. Might there be insight into Sally's decision in the social structure theories? Do social process theories throw any light on why she would point a loaded rifle at her husband and pull the trigger? Do social conflict theories help us understand why she acted the way she did? Would the categories of violent crime, especially spousal abuse, be instructive? Or maybe we should be examining victimology, searching for an explanation as to why Roger directed her to "Go ahead and shoot me!" Or, maybe we should be viewing Roger as the offender and Sally as the victim? Personally, I did not spend much time wondering which criminological theory would be most applicable in this case. I did come away, however, with the nagging feeling in this case and many others I met in my career, that criminologists might find fertile ground in the exploration of "human stupidity".

As noted at the start of this article, Part 2 of *Go Ahead and Shoot Me!* depicts contemporary cases and illustrates that the people who committed the crimes seemed to be more entrenched in criminality than were people who committed similar crimes in previous decades. Part 2 also offers my impressions of changes that occurred in the criminal justice system through my forty-year career. There is more specialization, such as in the Courts (e.g., Drug Courts, Domestic Violence Courts, Traffic Courts, Small Debt Courts, Indigenous Courts, and Mental Health Courts). This need for specialization may evidence a level of social ill that also needs addressing and is perhaps not the birthright of the criminal justice system per se. For example, lack of adequate parenting, poverty, social exclusion, racism, violence, gangs, drugs in schools and prisons, homeless youth, addiction and mental health issues are more prevalent now.

Another observation I have is related to the never-ending search for alternatives. Jessica's story in Part 2 is a good example. She was charged with shoplifting and the judge gave her an absolute discharge. As you will learn, she exited the courtroom with a spring in her step and her head held higher. Does every shoplifting charge really need to be heard in court? Might there be an administrative body developed to deal with "lower level" charges related to theft? Another case in point is Brandon, age 24 at the time of his offense. He pleaded guilty to one charge of impaired driving. At the time, he was living in a rural hamlet where all young men "worked hard; played hard". The heavy drinking and impaired driving had become built into his way of life, despite the potential for serious and fatal consequences. These factors did not weigh much in his mind at that age. He was fined, had his license suspended for a year, and had to make alternative arrangements to get to work and to visit his family. Many years later, after he married, had a child, and had risen in his work to a supervisory position, he started to think about the consequences of a criminal record. Despite all the negative comments he heard about getting a pardon, he decided to do the paperwork himself. The parole board granted his application and now Brandon no longer has to deal with the barriers imposed by a criminal record which are more extensive than he ever imagined when he was 24 years old. Does every impaired driving charge really need to be heard in court? Might there be an administrative body to deal with "lower level" charges related to impaired driving, thereby reducing the backlogs and costs of going to court?

The idea of "alternatives to imprisonment" receives a compelling boost in Juanito's story. He lived years of chaos and turmoil involved in street drugs, eventually having to face a number of trafficking and related charges. He was also under investigation by police for manslaughter related to a fentanyl overdose of a suspected client. That was enough to convince Juanito to decide "he was done" with his criminal activity. He stopped drinking and drugging, accepted the alternative to go to Drug Court, completed the intensive Drug Court program over a period of thirteen month, and graduated from Drug Court with testaments of his return to normalcy coming from program staff, friends, his parents, and his sister, all the while his six year old daughter was hanging onto her dad's leg! Everyone in court that day cheered and applauded Juanito's achievements – there wasn't a dry eye in the courtroom!

THE PERSON IS NOT THE CRIME

Go Ahead and Shoot Me! provides a look at some colorful characters and some sad ones; it looks beyond their crimes because in our business, the person is not the crime. As Howard Sapers reminds us in his contribution to the book, "They have lives and ambitions beyond their crime". In criminal justice, we need to focus on what we can influence and change – the fact and nature of their crime cannot change but what comes next in their lives often can. ■

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RÉSUMÉ

Go Ahead and Shoot Me! And Other True Cases about Ordinary Criminals
Durvile Publications Ltd. (2020).

DOUG HECKBERT

M. Doug Heckbert donne un aperçu de son livre intitulé *Go Ahead and Shoot Me*!, qui regorge de moments de légèreté et de compassion sincère. Son livre représente également un réel cours sur la probation et la liberté conditionnelle (c. à d. services correctionnels communautaires) à chaque niveau, truffé d'observations intéressantes sur le changement systémique. Dans cet article, M. Heckbert présente les théories issues de la criminologie, tempérés de sa connaissance approfondie du système de justice pénale ainsi qu'une sélection de témoignages tirés de son livre. Ces témoignages mettent en évidence les lacunes dans le système de justice et les maux sociaux apparus au cours des dernières décennies et qui, ensemble, peuvent entraîner un comportement criminel chez certaines personnes. Le livre intitulé *Go Ahead and Shoot Me!* soulève de nombreuses questions importantes; par exemple, « avons nous, comme parents, membres de la famille, membres de la collectivité et agents correctionnels, des attentes trop limitées? Si nos attentes étaient plus élevées, les personnes pourraient bien se montrer à la hauteur. » Donc, même si les témoignages présentés dans ce livre sont des récits de désespoir, ils deviennent des récits d'espoir lorsque l'auteur illustre leur retour à la normalité. En situant ces réflexions dans son contexte de compréhension holistique du système de justice pénale, M. Doug Heckbert apporte des précisions et de l'espoir au public à l'égard de la réinsertion et de la prévention au delà du système carcéral.

La gestion des détenus dits « radicalisés » : au-delà de l'idéologie, une approche rhizomique

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Cet article porte un regard critique sur la primauté de l'idéologie dans l'évaluation et la gestion des détenus dits « radicalisés ». Il y est plutôt proposé une approche rhizomique, mettant de l'avant les agencements-vie, les chemins d'où émergent le désir d'engagement afin d'y extraire les éléments pertinents à un plan correctionnel, une évaluation du risque, une libération avant la fin de la sentence, un suivi en communauté, etc. En ce sens, M-Rhizome est une proposition ouverte qui permet d'adresser la complexité.

Quelle que soit la terminologie employée, la gestion des détenus dits « radicalisés » demeure un casse-tête dans de nombreux pays. Jonglant entre les considérations sécuritaires et la nécessité de réinsertion sociale, l'équilibre est bien souvent difficile à faire. Outre les différentes approches adoptées pour gérer ces personnes, l'idéologie – qu'elle soit religieuse ou politique – est *de facto* identifiée comme un facteur de risque important. Cette manière de comprendre le phénomène dit de « radicalisation violente » teint toutes les étapes de la gestion des détenus identifiés comme « radicalisés » ou « terroristes ». Que ce soit pour établir une cote de sécurité, un plan correctionnel, un transfèrement, un projet de réinsertion, une expertise ou encore une évaluation du risque, l'idéologie est au cœur des analyses. Or, qu'en est-il de la primauté de l'idéologie ? Est-elle réellement au cœur de la transformation ? Après tout, avoir des croyances ou des opinions dites « hors de la norme » ou « radicales » ne posent pas forcément problème à partir du moment où elles ne s'incarnent pas dans la violence.

VOUS AVEZ DIT « RADICALISÉS » ?

Dans son *Manuel sur la gestion des détenus extrémistes violents et la prévention de la radicalisation violente en milieu carcéral*, l'Office des Nations Unies contre la drogue et le crime (ONUDC, 2017) fait le constat de l'impossibilité d'estimer le nombre de détenus dits « radicalisés » ou « extrémistes violents » dans le monde. Si dans certains pays, ils représentent moins d'un pourcent de la population carcérale, comme par exemple au Canada (Conley, 2019), ou se comptent sur les doigts de la main ; en d'autres lieux, ils peuvent atteindre plusieurs milliers de personnes. Dans une étude menée sur la gestion des détenus dits « radicalisés » dans dix pays européens (France, Belgique, Espagne, Allemagne, Grande-Bretagne, Suède, Pays-Bas, Norvège, Danemark, Grèce), Basra et Neumann (2020) constatent, dans un premier temps, une augmentation de cette sous-population dans les établissements carcéraux de ces États. D'autre part, s'ils dénombrent environ 1414[1] détenus incarcérés pour des délits en lien au terrorisme, le nombre grimpe rapidement à 3080 lorsqu'ils y ajoutent les 1666 « potentiels extrémistes ». Autrement dit, des individus incarcérés pour des infractions nullement liées au terrorisme, mais identifiés comme à risque de « radicalisation violente » par les autorités pénitentiaires. En France, par exemple, le

Contrôleur général des lieux de privation de liberté (CGLPL, 2020) rapporte qu'en 2019 « 904 personnes incarcérées pour des faits dits « de droit commun » étaient suivies par l'administration pénitentiaire au titre de leur ancrage dans un mouvement de radicalisation islamiste violente » alors qu'elles étaient 525 « incarcérées pour des faits en lien avec le terrorisme islamiste » (p. 10). Il ne faut donc pas s'étonner d'une augmentation de la cohorte de détenus portant la marque de « radicalisés » dans les pays pratiquant ce genre d'identification.

Quel que soit le mode d'identification de ces individus dans les systèmes carcéraux, l'idéologie demeure un élément important de détection. Ce qui n'est guère surprenant puisque plusieurs définitions légales ou scientifiques du terrorisme en sont imbibées, de la même manière que celles sur la radicalisation ou l'extrémisme violent. Le *Code criminel* canadien, par exemple, définit le terrorisme à l'article 83.01 comme un acte commis « au nom — exclusivement ou non — d'un but, d'un objectif ou d'une cause de nature politique, religieuse ou idéologique » en vue d'intimider la population « quant à sa sécurité, entre autres sur le plan économique, ou de contraindre une personne, un gouvernement ou une organisation nationale ou internationale à accomplir un acte ou à s'en abstenir ». L'idéologie est également invoquée par l'Assemblée générale des Nations Unies dans sa résolution 49/60 du 17 février 1995. Le terrorisme étant des actes criminels « (…) qui, à des fins politiques, sont conçus ou calculés pour provoquer la terreur dans le public, un groupe de personnes ou chez des particuliers sont injustifiables en toutes circonstances et quels que soient les motifs de nature politique, philosophique, idéologique, raciale, ethnique, religieuse ou autre que l'on puisse invoquer pour les justifier ».

Au Canada, l'organisation en charge des détenus sous juridiction fédérale[2], soit le Service correctionnel du Canada (SCC), utilise le terme « délinquant radicalisé » pour qualifier ces personnes purgeant des peines pour des accusations en lien au terrorisme (actes de violence, financement, apologie, etc.). Ce délinquant est décrit comme un individu « motivé idéologiquement, qui commet des actes violents, qui aspire à les commettre, qui complote à cette fin ou qui en fait la promotion afin d'atteindre des objectifs idéologiques » (Stys et Michel, 2014, p. 1).

Dès son admission en établissement, cette étiquette et, par ricochet sa définition, oriente l'évaluation initiale, traçant une trame de fond, un calque qui sert de modèle lors des évaluations et des décisions subséquentes ; et ce, tout au long de la vie carcérale du détenu. Le passage à l'acte (violent ou pas) est alors imbibé d'une dimension idéologique (politique ou religieuse), permettant ainsi d'établir un lien causal entre ces deux éléments et par conséquent, de différencier cette sous-population carcérale des autres détenus. Leurs actions sont alors expliquées « non pas par les motifs criminels habituels, mais bien par des buts idéologiques » (Stys et Michel, 2014, p. 1).

En somme, depuis l'émergence de ce terme « fourre-tout », dont il n'existe jusqu'à présent aucun consensus définitionnel, à l'instar du terrorisme, la radicalisation a fait son entrée dans les systèmes carcéraux du monde. Elle se conjugue avec terrorisme et bien souvent, islamiste. Si l'identification de ces détenus repose sur leurs infractions liées à des faits de terrorisme, elle se fonde également sur le « jugement » des intervenants pénitentiaires qui bien souvent s'appuie sur de présumées affiliations ou adhésions à des courants idéologiques prônant la violence. Ces détenus dits « radicalisés » font alors l'objet d'une attention sécuritaire pointue et d'un traitement différentiel qui peuvent freiner leur réhabilitation. Il est vrai que les systèmes correctionnels ont un rôle important à jouer au plan de la sécurité publique et nationale. Toutefois, il est fondamental de ne pas perdre de vue que la sécurité des populations passe d'abord et avant tout par la réintégration de ces détenus dans la société. Pour ce faire, une bonne évaluation des besoins et du risque est, certes, de mise, mais elle se doit de s'inscrire dans un changement de vision quant à la place de l'idéologie dans l'analyse.

ÉVALUATION DU RISQUE ET DES BESOINS

En établissement, les « signes » souvent relevés pour catégoriser un détenu dit « radicalisé » ou en voie de le devenir sont, en grande partie, liés à la religion, dans le cas du « terroriste ou du radical islamique » ou à la politique. La possession d'objets ou de livres religieux/politiques, l'apparence physique (barbe, habit, coupe de cheveux, tatouages, etc.), le changement de fréquentations, etc., sont alors considérés comme des comportements à risque. La conversion devient suspecte ainsi que les

conversations politiques ou religieuses avec le personnel pénitentiaire ou d'autres détenus. Or, ces comportements dits « à risque » sont le propre de l'incarcération. On sait bien que Dieu arpente les corridors des pénitenciers, particulièrement lors de longues sentences. Concevoir alors la pratique religieuse ou la conversion comme suspecte est en soi problématique, puisqu'elle peut être inhérente aux conditions de vie dans un milieu carcéral. Si la prison est l'école du crime, elle est également un lieu de rencontre par excellence avec Dieu. Il devient le refuge, le guide, la seule ligne de fuite encore possible.

Par ailleurs, « [malgré] le brouhaha entourant la radicalisation en prison, il y a en fait peu de preuves disponibles (…) permettant de croire que cela se produit réellement (…) La plupart des éléments probants ne renvoient qu'à un nombre restreint d'études de cas d'individus qui se sont radicalisés en prison » (Stys et al., 2014, p.14). Ironiquement, si la ferveur religieuse est plutôt encouragée chez les détenus exempts de la lettre écarlate « R » (radicalisé) ou « TIS » (terrorisme islamiste), elle devient un facteur de risque pour ceux qui la portent dès leur évaluation initiale. Pourtant, Dieu peut devenir un facteur de protection. Il n'en demeure pas moins que ce jeu de dupes complique les évaluations et fait bifurquer de l'essentiel, soit le potentiel de réinsertion sociale qui bien souvent peut être mis à mal par ce « statut » de radical. Toujours est-il que la gestion de ces détenus en établissement (unités ou quartiers dédiés, isolement, etc.) porte davantage sur le risque sécuritaire qu'ils peuvent potentiellement présenter plutôt que sur leurs réhabilitations.

Outre la dimension sécuritaire, l'idéologie sert également à l'analyse des besoins. Elle se décline alors en croyances, opinions, attitudes, etc. Plusieurs établissements carcéraux offrent d'ailleurs des programmes axés sur les croyances et les attitudes. Au Royaume Uni, le *Her Majesty's Prison & Probation Service* propose des programmes dont l'objectif est de travailler sur les attitudes, les croyances et les perceptions de ces détenus. Le Service correctionnel du Canada fournit également ce genre de service (Michel et Stys, 2014). Les croyances deviennent alors un facteur de risque à partir du moment où elles sont catégorisées de radicales. En outre, même s'il n'existe toujours pas de profil type du « radicalisé », plusieurs études identifient chez le « radicalisé » des « vulnérabilités », en l'occurrence un rejet des valeurs de la société, un manque d'empathie envers les victimes, une quête identitaire, un sentiment de colère et d'humiliation, une faible tolérance à l'ambiguïté (Victoroff, 2005), des fréquentations d'extrémistes ou de terroristes (Sageman, 2004/2005), etc. À la lecture de ces caractéristiques, on ne pourrait faire de grands différences avec les membres de gangs, à l'exception des fréquentations. L'influence des pairs n'est pas nouvelle en criminologie. On en connaît déjà les impacts quant aux gangs de rue et au crime organisé. Le terrorisme n'est en rien différent. D'ailleurs, certaines organisations dites terroristes peuvent travailler de concert avec des groupes criminels. Intervenir sur les fréquentations (amicales ou familiales) peut s'avérer une approche plus efficace que de s'attaquer à l'idéologie par des programmes de contre-discours ou de (dé)radicalisation.

M-RHIZOME : UN « MODÈLE » D'ANALYSE FLUIDE, MOUVANT ET PERSONNALISÉ

Les détenus dits « radicalisés » présentent un bon potentiel de réinsertion sociale. En effet, ils sont moins susceptibles d'avoir des antécédents judiciaires, des difficultés relationnelles avec leur famille et des problèmes de toxicomanie ou de santé mentale. Ils sont également plus instruits (Stys *et al.*, 2014). Un potentiel, toutefois, peu exploité compte tenu de l'obsession idéologique et sécuritaire. Posons-nous la question… En mettant l'idéologie au cœur des évaluations et des analyses, n'entrons-nous pas dans le jeu de ces détenus ? Pensons plutôt à une approche plus en résonnance à la complexité humaine : M-Rhizome.

M-Rhizome est une carte de vie. Plus qu'un modèle, il est un agencement-vie, fluide, rhizomique et mouvant. Il permet de mieux comprendre les chemins empruntés et surtout l'émergence du désir d'engagement. Il donne des indices sur l'approche à adopter dans un plan correctionnel et de suivi en communauté. Il soutient les intervenants dans leurs évaluations du risque sécuritaire et de récidive, mais aussi dans leurs prises de décision quant aux libérations avant la fin des sentences. En ce sens, l'évaluation initiale demeure une étape cruciale dans la gestion globale de ces détenus. Elle trace la trame de fond de la vie carcérale du détenu. Elle ne doit donc pas s'aveugler de prénotions, de préjugés ou de la primauté de l'idéologie politique ou religieuse. Cette évaluation devrait chercher à

comprendre l'émergence du désir d'engagement et son chemin de vie. Il serait plus à propos qu'elle ait pour objectif de dessiner une carte identifiant les fuites, jihadistes ou autres, leurs (re) territorialisations ou leurs abolitions. Elle traduirait ainsi un récit de vie, permettant de détecter les affects en jeu ; les différentes intensités de vie qui poussent, font agir et donnent sens à des lignes de fuite. Elle permettrait de décortiquer ce désir qui parfois peut sommeiller dans le cœur, et non l'esprit, de ces détenus. Un désir, soit-il mortuaire ou violent, qui fait ressentir la puissance de vie même dans un lieu où les personnes sont privées de liberté.

M-Rhizome est le fruit d'une recherche de 10 ans menée au Canada, en France et en Belgique auprès de personnes s'auto-identifiant comme des jihadistes ou des ex-jihadistes. Toutefois, il peut s'appliquer, quant à nous, à tous les détenus ou délinquants dits « radicalisés », puisqu'avec M-Rhizome, l'idéologie n'est pas au cœur de l'analyse. ■

ABSTRACT

La gestion des détenus dits « radicalisés » : au-delà de l'idéologie, une approche rhizomique

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This article takes a critical look at the primacy of ideology in the assessment and management of so-called "radicalized" prisoners. Mourani proposes a rhizomic approach, which differs by taking life assemblages into account, and by making it possible to identify the paths from which a desire for engagement may emerge. As such, the proposed M-Rhizome is an open-ended, holistic, and inclusive proposal that addresses the complexity sufficiently to obtain the information and insight needed for a successful correctional plan, risk assessment, early release, support during social reintegration in the community, etc.

NOTES

1. Sur les 1414 détenus, près de la moitié sont incarcérés en France (558 personnes). En outre, ils sont 329 à être détenus en Espagne, moins de 292 en Allemagne, 238 en Grande-Bretagne et 136 en Belgique.

2. Au Canada, les détenus sous juridiction fédérale sont ceux purgeant des sentences de plus de deux ans. La gestion des peines de moins de deux ans est prise en charge par les provinces et territoires.

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Probation and Parole in Canada

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The options of parole and probation are tools that the justice system can use to aid in the rehabilitation of offenders and the reduction of recidivism in society. Roadblocks to successful outcomes vis-a-vis probation and parole may come from existing public opinions, outdated policies, and selective media coverage of court cases. Attention is directed towards the possible mitigation of these factors through enhanced public education and the need to more accurately measure public opinion upon which policies are based.

In the Canadian correctional system, there are several options available to judges at the time of sentencing to help ensure a measured punishment. These options are generally centered on the need for offenders "to provide reparations for harm done to victims or to the community" all the while ensuring other needs are met, such as to , "assist in rehabilitating offenders" (Canadian Criminal Code, 1985, ss.718(a to f)).

> *"Over the last twenty years, the proportion of those on full parole sent back to federal custody for a new crime has fallen from 15% to 1%. And the success lasts; the data show that even 10-15 years after the completion of a sentence, 75% of those paroled had not been convicted of any other crime"*
>
> (John Howard Society of Canada, 30 May 2018).

Probation and parole offer effective rehabilitative tools that can allow an inmate to be in touch with their community and with society while they are still serving out part of their sentence. In order for it to be successful, there are a few basic things that ex-offenders need to have access to in their life and this includes the support of other individuals (Gunnison and Helfgott, 2011, pp. 289-290). Other factors may also prevent them from having a successful transition or experience, such as the 'tough on crime' initiatives that increase punishments for offenses and fuel negative public perceptions of individuals with criminal records (Gunnison and Helfgott, 2011, p. 290).

The needs of inmates upon release from a custodial sentence in Canada are layered, beginning with shelter, food and housing (Brown, 2004, p. 97). From there, more education in financial literacy, employment, skills acquisition, and social supports create an environment in which the ex-offender can learn to become self-sufficient and access resources without turning to criminal behaviours (Brown, 2004, pp. 103-104). Similar findings are available in the United States, from needing access to basic needs to the provision of self-betterment opportunities (Gunnison and Helfgott, 2011, p. 287). The road blocks to these outcomes can include "unrealistic reintegration plans, exposure to destabilizers, lack of personal support…and high stress" (Brown, 2004, p. 97). As well, again, 'tough on crime' policies that restrict an ex-offender's ability to obtain a job or to rent a place to live (Gunnison and Helfgott, 2011, p. 290) by creating a narrative that offenders need harsher punishments to be rehabilitated, which can create public distrust. The public reluctance to offer opportunities to ex-offenders might be the product of prejudice that may be informed by outdated data and opinions

and that does not account for the need to continue their rehabilitation beyond the context of a correctional institution.

The granting of parole or probation generally goes unreported by media, except in the case of those imprisoned for high-profile sexual offences, for example, or other criminal acts that hold sensational appeal; for example, the recent day parole of a man in Calgary, Alberta convicted of murdering a teacher named Craig Kelloway (Dormer, 2020). This focus on the extreme end of criminal behaviour could lead individuals in society to believe that more of those convicted of such serious offences are being paroled or put on probation than is the case.

In the 2017/2018 year, a total of 391,722 adult offenders were admitted into custodial or community sentences with 150,114 of the adults sentenced under community supervision (Statistics Canada, 2020). Around 38 percent of adults admitted were serving community sentences in the 2017/2018 year with the majority being probation and conditional sentences or other community programs such as restitution orders, community service orders, and fine option programs (Statistics Canada, 2020). This is also on par with statistics on those serving sentences in 2017. The majority of adults in 2017 under provincial and territorial correctional supervision were serving community sentences, approximately 80 percent and around 39 percent at the federal level, (Statistics Canada, 2019). The same is true for young people, in 2017 around 89 percent were under community supervision instead of serving custodial sentences (Statistics Canada, 2019).

For someone to be placed on probation, a few legal conditions must be met. The offense committed cannot have a minimum sentence, a possible 14-year sentence or a possible life sentence, and is generally given to those convicted for a term of imprisonment of two years or less (Canadian Criminal Code, 1985, s.730(1); s.731(1)(b)). This indicates that people who successfully achieve probation have committed less serious offences than those who end up serving custody sentences.

The opportunity of parole for certain individuals can cause some people anxiety, due to the perception that this allows dangerous people to escape justice. A recent study conducted in Australia by Fitzgerald, Freiberg, and Bartels (2020) found the general public to be generally in favour of punitive sentences, based on general population survey data (p. 171). However, when members of the public such as jury members were given more specific information surrounding offences and the individuals who had committed them, they made sentencing decisions comparable to those of judges (p. 171). A lack of public education concerning the criminal justice system and lack of informed opinion on the legal system may play a role in the development and perpetuation of the stereotypical 'tough on crime' narrative. Fitzgerald, Freiberg, and Bartels also found it was more common for Australians to hold a mixed view on justice practices, wanting both rehabilitation for the offender and a level of associated punishment (p. 181). This shows that while it may seem that the general public is in favour of 'tough on crime' policy, in reality public opinion is much more complex and may not be accurately represented in existing criminal justice initiatives (p. 183).

In order for probation or parole to be successful, the support of the general public is important. As identified by research, an increase in accessible information for the public about the contexts of criminality is instrumental to informed opinion on whether parole or probation is being utilized correctly (Fitzgerald, Freiberg, & Bartels, 2020, p. 171). Greater access to information/education on this subject including exposure through the media to the different types of cases that receive community sentencing options may increase public confidence and reduce fear over ex-offenders living in the community. This would ultimately benefit not only that individual but the larger society as well, by potentially reducing recidivism rates. ■

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RÉSUMÉ

Probation and Parole in Canada

SAMANTHA BARLAGE
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Les options de liberté conditionnelle et de probation sont des outils que le système de justice peut utiliser pour aider à la réinsertion des contrevenants et à la réduction du récidivisme dans la société. Les opinions publiques existantes, les politiques obsolètes et la couverture médiatique sélective des procès peuvent constituer des barrières aux résultats positifs en ce qui concerne la probation et la liberté conditionnelle. On porte attention à l'atténuation possible de ces facteurs au moyen d'une meilleure sensibilisation du public et de la nécessité de mieux évaluer l'opinion publique sur laquelle s'appuient les politiques.

Specialized Drug Treatment Courts: An Alternative to Incarceration and the Role of Probation Officers

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Drug Treatment Courts (DTCs) are specialized courts designed to assist individuals who have a history of offending due to being under the influence of a substance or who have committed a crime to support their addiction (CDTC, n.d.). DTCs developed during the 1980s in the United States as a response to increasing rates of drug-related offenses (Gutierrez, 2012). DCTs have proliferated across the United States; in 2014 there were 2,619 and across the country (Jewell et al., 2016). The first Canadian DTC was established in Toronto in 1998, Vancouver in 2001, Edmonton and Winnipeg in 2005, Ottawa and Regina in 2006, and Calgary in 2007 (DTC Funding Program, n.d.; Calgary DTC, n.d.). Although DTCs may differ in approach, all focus on assisting participants to end the addiction-incarceration cycle.

According to a study published in the *Canadian Journal of Addiction*, more individuals in prison are afflicted with substance use disorders (SUDs) than any other form of mental illness (Craig, 2015). Such individuals are also the most likely to recidivate (Griffiths et al., 2007). DCT specialized courts thus clearly offer a means of putting an end to much crime and recidivism, but how do they work and are they successful? There are few current statistics on Canadian DTCs surrounding accessibility; certain social factors are not well understood, such as retention and completion rates, and some critics say that, within some DTCs, punitive measures related to relapse may undermine successful treatment (Allard, 2011).

ELIGIBILITY AND GRADUATION REQUIREMENTS

Drug Treatment Courts offer an alternative to incarceration to individuals charged with an offence. Eligibility requirements vary across the DTCs in Canada, but most base it on the type, circumstances, seriousness, violence and other characteristics of the crime and the individual's criminal history. For example, the Calgary Drug Treatment Court (CDTC) confirms that the applicant is addicted to a Schedule I Substance and then assesses their addiction. This classification includes heroin, cocaine, methamphetamine or other opiates (*Controlled Drugs and Substances Act*, 2016). As per Department of Justice Canada, a person is eligible to participate in a DCT if their offence was related to an SUD and that this latter is considered to be the root cause of their criminal behaviour (Public Prosecution Service Canada, 2020). Each DTC determines its own 'graduation' criteria (6.1 Drug Treatment Courts- PPSC, n.d.). The Calgary DTC mandates a five-stage process that includes intensive treatment (12 weeks), recovery skill development (12 weeks), practical application (12 weeks), community transition (3 months) for a minimum of one year (Hoffart, 2020).

PROFESSIONALS AND THE ROLE OF PROBATION OFFICERS

The DTC process always includes a multidisciplinary team typically including judge, prosecutor and defense lawyer (Werb et al., 2007). As well, participants are subject to random drug testing and regular court appearances whereby the Judge assesses their progress (Latimer et al., 2006). Such as with the Vancouver DTC, probation officers are responsible for case planning and participant management (DTC Vancouver, n.d.). Additional key players at the Vancouver DTC include a psychologist, addictions counsellors, medical staff (nurse and/or Dr.), a clinical case manager and an employment assistance worker (DTC Feasibility, 2017). These professionals provide judicial supervision, drug testing, incentives for progress (positive reinforcement), sanctions for lack of compliance, etc. (DTC Funding Program, n.d.), and bail conditions, such as abstaining from drug/alcohol use, and curfews (Lyons, 2013). Probation Officer involvement may vary based on the individual DTC process. In a study on the personal experiences of participants of a Pennsylvania DTC, the role of the Probation Officer throughout the DTC process was highlighted as supportive, dedicated and caring (Kuehn & Ridener, 2016). The study included structured interviews with graduates vis-a-vis their experience with probation officers. One participant characterized this relation by stating, "It's more of a bond with the PO. We are closer than with other POs because of regular visits. I have her personal number, which I have called, she is right there". Another participant spoke to the importance of probation officer involvement: "When you're an addict and you do that manipulating and lying and all that especially to your family… that's what I did to my Probation Officer but it takes time and they learn to trust you and that's what happened with my PO. It's just, she's like family to me" (Kuehn & Ridener, 2016).

RECIDIVISM, PARTICIPANT EXPERIENCES AND MOVING FORWARD

A 2006 meta-analysis of research on DTCs in the United States, Canada and Australia found that DTCs reduced recidivism rates by 14% among the participants (Latimer et al., 2006). Recidivism was measured within timeframes ranging from 3 to 48 months. While the researchers suggested that a longer period of time would have been beneficial (e.g., to see if recidivism rates would differ), they concluded that DTCs are an effective way of reducing recidivism compared to traditional courts (Latimer et al., 2006). In a recent evaluation report, the CDTC analyzed recidivism as convictions or charges within an average of 3.84 years post-graduation (Hoffart, 2020). Looking at a cohort of 87 graduates, the report compared pre-admission to post-graduation criminal convictions and found a 76.1% decrease (Hoffart, 2020).

The CDTC states that DTC is not an easy way out of an offence; rather, it is an intensive program in which commitment to treatment is necessary. For example, Sharon Ballantyne, a graduate of the Calgary Drug Treatment Court noted that "…there were definitely times when I thought it would be easier to just do my time in jail". Ballantyne considered a "hard" process "… getting through a five-month treatment program, learning how to live with and respect others, following rules, going to court every Thursday… there were days where I didn't think I was going to make it" (CDTC, n.d.). Another participant commented that, "A common issue with a lot of addicts and alcoholics is the inability to communicate effectively and openly with people and the drive to be accountable for your actions, standing up in front of the judge every week and being able to talk about your feelings was invaluable" (Hoffart, 2020). Some DTCs offer additional programs including support specific to Indigenous peoples such as healing circles and referral to Indigenous Addiction Treatment programs.

Drug Treatment Courts provide an opportunity for some individuals whose criminal behaviour is deemed to have been motivated by a substance-abuse disorder to be rehabilitated through programs that include support for reintegration into the community. Successful reintegration is an important aspect of reducing recidivism (Craig, 2015) following the treatment for SUD received during the program. As Latimer et al. have concluded, however, additional research is required to better understand recidivism rates over the long term. ■

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RÉSUMÉ

Specialized Drug Treatment Courts: An Alternative to Incarceration and the Role of Probation Officers

PATRICIA DOIRON
Law and Society (Hons.), Faculty of Arts, University of Calgary.

Les tribunaux de traitement de la toxicomanie (TTT) sont des tribunaux spécialisés visant à aider les personnes ayant des antécédents criminels en raison d’être sous l’influence d’alcool ou de drogues ou qui ont commis un crime pour maintenir leur dépendance (CDTC, sans date). Les TTT ont été mis en place au cours des années 1980 aux États Unis en réponse à l’accroissement du taux d’infractions liées aux drogues (Gutierrez, 2012). Les TTT se sont multipliés partout aux États Unis. En effet, en 2014, on en comptait 2 619 partout au pays (Jewell et coll., 2016). Le premier TTT canadien a été établi à Toronto en 1998, puis ont suivi ceux de Vancouver en 2001, d’Edmonton et de Winnipeg en 2005, d'Ottawa et de Regina en 2006, et de Calgary en 2007. Même si les approches des TTT peuvent être différentes, elles se concentrent toutes à aider les participants à mettre fin au cycle dépendance-incarcération.

Leading the Way to Social Justice

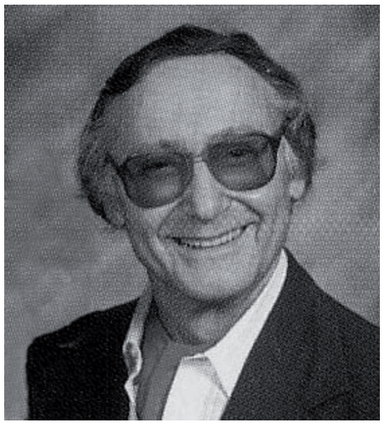
R.E.B. BOB BROWN[1] ET ALIA: FRIENDS AND COLLEAGUES OF PROFESSOR EMERITUS JAMES C. HACKLER

Bob is a former Director of the Corrections Programme at the International Centre for Criminal Law Reform and Criminal Justice Policy and former District Director, and Area Director Vancouver Island Parole, Correctional Service of Canada. He is currently an independent criminal justice consultant working internationally, most recently in Kenya, Sierra Leone, and Somalia.

What is the common denominator among the following: social justice; conditional release; and a passion for cycling? Through the eyes of this writer and many friends and colleagues the answer is simple – Professor Emeritus James C. Hackler. Dr. Hackler passed away in his 90th year on 2020 04 13 in Victoria, BC. This article will attempt to connect the dots of the three items above - social justice, conditional release, which is a theme of this edition, and one man's joy of cycling. An international perspective will be highlighted, supported by domestic reflections on the life and times of Dr. Jim.

SOCIAL JUSTICE

Following World War II social justice was born as a revolutionary slogan embodying the ideals of progress and fraternity. Of particular importance in the present context (2006) is the link between the growing legitimization of the concept of social justice, on the one hand and the emergence of the social sciences as distinct areas of activity and the creation of economics and sociology as disciplines separate from philosophy (notably moral philosophy) on the other hand[2].



Dr. Jim Hackler
CREDIT: American Society of Criminology (ASC)–1998

A review of the above finds a number of words, phrases that reflect Dr. Hackler's "leading the way forward", i.e., progress and fraternity; emergence of social science; separation of sociology and philosophy.

CONDITIONAL RELEASE

In 2003 Dr. Hackler and his wife Bunny had been in Victoria for seven years following their relocation from Edmonton and the University of Alberta. That same year the Council of Europe defined conditional release as "the early release of sentenced prisoners under individualised post-release conditions. Amnesties and pardons are not included in this definition" [3].

In 1990 Dr. Jim was in his 25th year as a professor in University of Alberta's Department of Sociology when the UN endorsed the *Standard Minimum Rules for Non-custodial Measures – the Tokyo Rules*. The *Rules* address post-sentencing dispositions highlighting halfway houses and various forms of parole[4]. More critically the *Rules* stress the importance of public understanding of and cooperation with the safe and timely implementation of non-custodial measures. *Rule 18.2* is right in line with Dr. Jim's way forward: "conferences, seminars, symposiums and other activities should be regularly organized to stimulate awareness of the need for public participation in the application of non-custodial measures"[5].

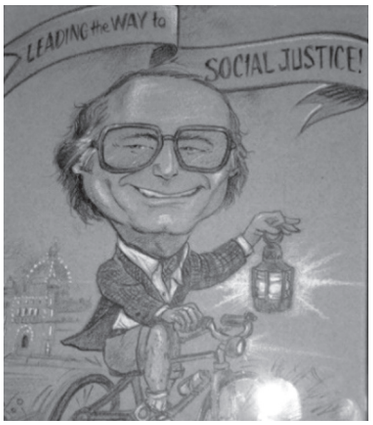
During the same year, 1990, the Correctional Service of Canada published the second edition of their Mission document. Two of their Guiding Principles are consistent with the above and Dr. Jim's way forward.

- We will ensure that appropriate segments of the public are consulted in the development of the Service's key policies[6].
- We will endeavour to be a positive presence in the community and to be a social, cultural, and economic asset[7].

The "intellectual" environment shared above, the Professor's belief in speaking truth to power, and his academic achievements to be shared below help connect some of the dots, helping us understand how Dr. Hackler found the path toward social justice.

JOY OF CYCLING

Although no date is evident, President John F. Kennedy is alleged to have opined that "nothing compares to the simple pleasure of a bike ride." I am confident that Dr. Jim would have fully endorsed this sentiment.



Dr. Jim Hackler "Leading the Way to Social Justice"
CREDIT: R.E. Bob Brown–09.18.2009

The caricature to the left of Dr. Jim connects more of the dots. It will be highlighted further below by references to his joy of cycling from a number of friends and colleagues.

SOME REFLECTIONS ON THE LIFE AND TIMES OF DR. JIM

Professor Hackler's academic background is extensive and shared briefly: In 1952, from the University of California, Berkeley he received his Bachelor of Science degree in Business Administration and in 1956 his Teaching Certificate. In 1959 he obtained his Master of Arts in Social Sciences from San Jose at Berkeley followed in 1965 by his PhD, with a specialization in criminology, from the University of Washington.

In 1965 Dr. Hackler's years of dedication in obtaining the requisite academic qualifications shifted to employment that would cover a period in excess of five decades. The initial three decades were at the University of Alberta, until 1995 with the remaining significant contribution as Adjunct Professor of Sociology at the University of Victoria. Throughout, his concentration was on sociology, focusing on juvenile/youth justice, and finding and leading the way to social justice.

The above reflections are necessary; however, I am, with respect, confident that Dr. Hackler would be much happier if this article concentrated more on the reflections of his friends and colleagues. Reflections that highlight the many contributions that this compassionate, caring, thoughtful and loving member of the community made to enhancing social justice while enjoying his joy of cycling.

Jeff Christian, a colleague who has held numerous criminal justice senior management positions in two provinces (regions) and one territory recently characterized Dr. Hackler as a powerful and consistent voice in the endeavour to create more understanding of the criminal justice system among ordinary Canadians. Jeff further highlighted that the work of public education that Professor Hackler thought so important would continue through the Canadian, British Columbia and Vancouver Island Criminal Justice Associations, which make an enduring contribution to the community and to his legacy[8]. Jeff's reflections are consistent with the UN Tokyo Rules noted earlier and reflect parole community engagement challenges in Canada.

On 2009-09-18 at the Church of St. John the Divine in Victoria (BC), Professor Hackler was presented with a CCJA Certificate of Appreciation along with the caricature of Dr. Jim riding his bicycle, holding a lantern, against a backdrop of the BC legislature and the caption "Leading the Way to Social Justice". The framed caricature was presented with a Certificate of Recognition by Jeff Christian BC Criminal Justice Association President in recognition of the considerable efforts that Dr. Hackler had expended over the years in keeping community forums available for holistic discussions of criminal and social justice issues. During the presentation, Jeff also shared that Dr. Jim had been named Honorary President in anticipation of the introduction of a BCCJA Chapter - the Vancouver Island Criminal Justice Association (VICJA). The

Dr. Hackler, Reverend Dr. Munn, & Jeff Christian
CREDIT: Esther Wilzewski, Victoria Volunteer, 09.18.2009

festivities were also honoured by the attendance and participation of then CCJA President Kathryn Gregory.

As a priest in downtown Victoria one of Reverend Munn's delights was interacting with people from all walks of life - from the mayor and downtown business association, to the shelter workers and street people. When he realized he knew the names of the street dogs, he thought he was maybe getting too entrenched; but then, wending his way with bicycle helmet through tourists and traffic, from professorial office to parole office, Dr. Jim cycled by, conjoining academia and justice as the Reverend was doing with faith and justice. Just by entering and without even knowing it , Dr. Jim could change the tone of a room through his commitment to physical exercise, intellectual rigour, and ethical commitment to those with least social power. The sum of these dots adds up to a powerful combination. The Reverend learned and was inspired and energized by Dr. Jim's presence, and his passing re-invigorates in the Reverend those remarkable qualities[9].

The Reverend highlights Dr. Jim's cycling to the parole office. Not long after his relocation to Victoria, Dr. Hackler became actively involved with the Vancouver Island Parole District's Citizen's Advisory Committee including several years as the Vice Chair. The participation is a further example of him breathing life into the UN Tokyo Rules, this time through a parole lens.

Bent Andersen, with a lengthy work history as a criminal justice professional shared the podium at various justice presentations with Dr. Hackler. Bent recalls how Dr. Jim at times would combine his witty sense of humour with his professional approach. Dr. Hackler was compassionate and championed fairness with all who came into contact with the criminal justice system. He was on many occasions the voice of those unable to clearly articulate issues affecting them within the criminal justice system[10].

Dr. John Winterdyk first learned of Professor Hackler as a criminology graduate student at Simon Fraser University while taking a course on (then) juvenile justice. Dr. Jim's book, *Prevention of youthful crime: The great stumble forward* (1979), left a lasting impression. John shared that all owe Professor Hackler a debt of gratitude as a pioneer in Canadian criminology and admiration for his exceptional academic work especially in relation to youth justice both nationally and internationally.

The most endearing binding agent for John was Dr. Jim's passion for cycling. John fondly remembers exchanges at various academic venues around the world. While John never took his bike to any of the foreign meetings, it was not uncommon to see Dr. Jim's faithful bike in tow. John often wondered if it was part of his travel checklist[11].

A second former university student perspective is provided by Dan Denis, a colleague with many years of senior management criminal justice experience. Dan loved Dr. Jim's intellect and the quirkiness that came with it. From riding his bike onto the campus even on those not-so-warm Edmonton days, to his storytelling in class! He was an inspiration to many students, dating back to the late 60's and early 70's at University of Alberta. Dr. Hackler was one of Dan's Sociology (juvenile delinquency) professors back then and he can be credited/blamed for Dan choosing corrections as a career. It was information Dr. Jim provided to his students that led Dan to a summer job at Drumheller Institution as a student classification officer in 1970! They stayed in touch throughout the years, especially in Victoria where they had both moved in the 90's. Dan shared that Professor Hackler was "a mentor and a friend, such humanity, such great memories. Loved the guy"[12].

Dr. Mikael Jansson, University of Victoria became a close friend and colleague of Dr. Jim. Consistent with the above, he has much to share = and yes, a bicycle story is included.

Professor Hackler & wife Bunny at ASC Meeting in Atlanta
CREDIT: American Society of Criminology – 1986

Mikael shared that Professor Hackler over the years received significant international recognition. In 1998, the American Society of Criminology (ASC) awarded him with the Herbert Bloch Award in recognition of outstanding service contributions to the Society and to the professional interests of criminology.
During 1959-60, James Hackler was in Vienna having

been awarded a Fulbright Scholarship to study youth organizations in Europe. The sabbatical to Austria was his introduction to travelling on a bicycle. Fast forward to Edmonton in 1984 when the graduate students started calling him the Red Baron after witnessing him riding with a long flowing scarf and goggles. Even being knocked off his bike by a robber in Panama in 2007 (aged 77) did not stop him from riding.

Dr. Jansson, consistent with "leading the way forward", indicates that Dr. Jim rapidly became engaged in several communities upon his arrival in Victoria. He joined several organizations, committees, and boards, including the Habitats for Humanity the Community Social Planning Council and Family Court and Youth Justice Committee, The Cridge Centre for the Family, The Family Court, Cool Aid Society and the BC chapter of the Canadian Criminal Justice Association. In the latter years he and his wife Bunny became very involved in philanthropy[13].

There is so much more that could be written about Dr. Jim's achievements and contributions in support of his social justice journey. Unfortunately, we only touched on a few of his achievements with little mention of his significant contributions to criminal justice literature or further acknowledgement of the significant philanthropic endeavours he made along with Mrs. Hackler.

The above does, if on a very limited basis, highlight some of Dr. Jim Hackler's many accomplishments and contributions and show how well he was admired by his friends and colleagues.

The theme of this edition of the *Justice Report* is parole and conditional release. It is hoped that you, the consumer of this article, if involved with parole in Canada challenge yourself to fully factor in a social justice perspective. If you were not involved, think of a way of contributing to Dr. Jim's journey by becoming involved with community corrections in your community.

Although these are sad times with the passing of Professor Emeritus James C. Hackler, I am fully confident that he would want our collective focus to be on the positive. He would want us to collectively complement his legacy and sojourn with the goal of further charting the path to true social justice. Dr. Jim would be even more impressed if our journeys were made utilizing the bicycle, the human-powered, pedal-driven, single-track vehicle, with two wheels. Dr. Hackler was one of a kind. We are all better members of our respective communities having known him. He will be missed. ■

NOTES

1. Bob is a former Director of the Corrections Programme at the International Centre for Criminal Law Reform and Criminal Justice Policy and former District Director, and Area Director Vancouver Island Parole, Correctional Service of Canada. He is currently an independent criminal justice consultant working internationally, most recently in Kenya, Sierra Leone, and Somalia.

2. UN 2006 p. 12

3. CoE 2003 p. 02

4. UN 1990 p. 04

5. Ibid. p. 06

6. CSC 1990 p. 16

7. Ibid

8. Jeff Christian, former District Director Vancouver Parole, Warden Elbow Lake Institution, and past President of the BC Criminal Justice Association (BCCJA).

9. Reverend Canon Dr. Harold Munn, former Rector of The Anglican Church of St. John the Divine, Victoria (BC).

10. Bent Anderson, former Chief Constable Oak Bay Police Department & former Board Member, Parole Board Canada

11. Dr. John Winterdyk, Criminology Professor, Mount Royal University, Calgary (AB).

12. Dan Denis, former Deputy Warden, William Head Institution and Pacific Regional Director, National Parole Board.

13. Dr. Mikael Jansson, Canadian Institute for Substance Use Research, Adjunct Professor in the Department of Sociology at University of Victoria (BC).

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RÉSUMÉ

Leading the Way to Social Justice

R.E. BOB BROWN[1] ET COLL. : AMIS ET COLLÈGUES DU PROFESSEUR ÉMÉRITE JAMES C. HACKLER

Quel est le dénominateur commun des éléments qui suivent : justice sociale, mise en liberté sous condition et passion pour le cyclisme? À travers le regard de cet auteur et de nombreux amis et collègues, la réponse est simple : le professeur émérite James C. Hackler. Le professeur Hackler est décédé à l'âge de 90 ans le 13 avril 2020 à Victoria, en Colombie Britannique. Le présent article cherche à établir le lien entre les trois éléments plus haut, soit la justice sociale, la mise en liberté sous condition, un thème du présent numéro, et le plaisir du cyclisme pour un homme. On mettra en évidence une perspective internationale, appuyée par des réflexions nationales sur la vie et l'époque du professeur Jim.

1. Bob est ancien directeur du programme correctionnel et ancien directeur de district au Centre international pour la réforme du droit criminel et la politique en matière de justice pénale ainsi que directeur de région au Bureau de libération conditionnelle de l'île de Vancouver, Service correctionnel du Canada. Il agit actuellement à titre de conseiller indépendant en matière de justice pénale, et ce, à l'échelle internationale. Plus récemment, il a travaillé au Kenya, au Sierra Leone et en Somalie.

JUSTICE

ACTUALITÉS - REPORT

CALL FOR **FEEDBACK/ REFLECTIONS** - JUSTICE REPORT 35.3

An interest has been expressed in running a Feedback/ Reflections page on the previous edition of the *Justice Report*, Volume 35.3. We will be running any comments received in the third edition of 2021.

Please transmit them to me at ccjapubsacjp@gmail.com or by post to the Ottawa office in consideration of publication.

Thank you, Nancy Wright, *Justice Report* Editor.

APPEL DE **COMMENTAIRES/ RÉFLEXIONS** - ACTUALITÉS JUSTICE 35.3

Un intérêt a été exprimé pour la mise en place d'une page de commentaires/réflexions dans l'édition précédente de l'*Actualité Justice*, volume 35.3. Nous publierons tous les commentaires reçus dans la troisième édition de 2021.

Veuillez me les transmettre au ccjapubsacjp@gmail.com ou par la poste au bureau d'Ottawa en vue de leur publication.

Merci, Nancy Wright, Éditrice — *Actualités Justice*.

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